



IN THE KERALA ADMINISTRATIVE TRIBUNAL AT
THIRUVANANTHAPURAM

Present:

The Hon'ble Mrs. M R Sreeletha, Judicial Member
&
The Hon'ble Mr. N. Vasudevan, Administrative Member

Dated this the 2nd of July 2024

OA-891/2020

Applicant(s):

- 1) Sajesh M., aged 42 years, S/o. Kuttykrishnan. M., Office Attendant, Office of the Additional Inspector of Factories, Malapuram, residing at Mannookara House, Panjiriyil, Manjeri, Malappuram, Kerala. - 676123

By Advs. CHANDRASEKHARAN NAIR S , RAJU GEORGE , GOKUL BABU S , AMALA J RAJ & JEREES J

Respondent(s):

- 1) Additional Chief Secretary, Labour and Rehabilitation Department, Government Secretariat, Statue, Thiruvananthapuram, Kerala - 695001
- 2) The Director, Factories and Boilers Department, Suraksha Bhavan, Kumarapuram,, Thiruvananthapuram, Kerala - 695011
- 3) The Secretary to Government, Personal and Administrative Reforms (Rules) Department, Government Secretariat, Statue,, Thiruvananthapuram, Kerala - 695001

Sri Rahul M, Government Pleader for the Respondents 1 to 3.

This Original Application having been finally heard on 2nd of July 2024, the Tribunal on the same day passed the following:



M. R. SREELETHA, JUDICIAL MEMBER

AND

N. VASUDEVAN, ADMINISTRATIVE MEMBER

O. A. No. 891 of 2020

Dated this, the 2nd Day of July, 2024

ORDER

N. VASUDEVAN, ADMINISTRATIVE MEMBER

The applicant joined service in Factories and Boilers Department in Malappuram District as Class IV employee. He is seeking by-transfer appointment to the post of L.D Clerk / L.D. Typist based on his position in the seniority list. As per Annexure A2 Government Order, dated 3.1.2014, 10% of the total vacancies in the post of L.D. Clerk / L.D. Typist in Government Departments is reserved for Class IV employees for by-transfer appointment. According to the applicant, he is legally entitled to be



appointed as L.D. Clerk in the 10% by-transfer quota based on the seniority in Annexure A6 Regional Seniority List of Kozhikode, where he is ranked as third.

2. The by-transfer appointment of L.D. Clerk / L.D. Typist from the category of Last Grade Servants is governed by Executive Orders issued from time to time, which are shown below :-

1. G.O. (P) No. 1/2014/P&ARD dated 03.01.2014.
2. G.O. (P) No. 21/2014/P&ARD dated 19.07.2014.
3. G.O. (P) No. 16/2015/P&ARD dated 28.05.2015.
4. G.O. (P) No. 19/2015/P&ARD dated 20.06.2015.
5. G.O. (Rt) No. 280/2017/P&ARD dated 27.05.2017.
6. G.O. (P) No. 4/2020/P&ARD dated 22.01.2020.

The Government Order dated 03.01.2014, cited as (1) above, had provided 10% reservation to the Last Grade Servants for appointment as L.D. Clerk / L.D. Typist on the basis of qualification and seniority, subject to certain conditions. In the Government Order



dated 19.07.2014, the Government provided that the seniority for by-transfer appointment is to be decided district wise based on common seniority list of entry cadre. In Clause 2 (ii) of the above order, it was specifically provided that all the by-transfer appointments are to be made district level on the basis of common seniority list prepared district wise. The Government later realised that there were many departments, where sufficient posts were not available for ensuring 10% reservation as provided in the earlier orders dated 03.01.2014 and 19.07.2014. As cadre strength at district level is not sufficient enough to satisfy 10% quota, many low paid employees lost their promotion chances. The Government then took a decision, vide order dated 28.05.2015 to earmark 10% of posts of L.D. Clerk / L.D. Typist as State level in departments, where the cadre strength of any particular district did not satisfy the minimum required



cadre strength. It was later noticed by the Government that in contradiction to the direction given, in many departments, despite the availability of sufficient cadre strength at district level, State wise seniority lists were prepared for making by-transfer appointment. It was in order to clarify the above anomalous situation that the Government issued order dated 20.06.2015 wherein it was clarified that all departments which do have sufficient cadre strength in all districts for earmarking 10% of district wise cadre strength for making by-transfer appointment from Last Grade Servants are bound to follow the district level appointment for implementing the Government Order dated 03.01.2014. In the Government Order dated 27.05.2017, the Government reintroduced State wise seniority for making by-transfer appointments replacing district wise seniority as stipulated in paragraph 2(ii) of the Government Order dated



19.07.2014. The Government later found that the Order dated 27.05.2017 had shattered the system of by-transfer promotions of low paid employees in various departments and many cases were filed in this regard before the Hon'ble High Court and this Tribunal. Some of the departments had carried out 10% district wise appointments and many others resorted to State wise appointments. There were several directions from this Tribunal to the effect that vacancies arising for appointment against 10% quota would be filled up on district wise basis till final settlement of the issue. It was in the above background that the Government issued the Order dated 22.01.2020 by which it was decided to reinstate the district-wise seniority as envisaged in Para 2 (ii) of the Government Order dated 19.07.2014. It was ordered that the district-wise seniority as envisaged in Para 2 (ii) of Annexure A5

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Government Order dated 19.07.2014, and rescinded as per Annexure A4 Government Order dated 27.05.2017, is reinstated forthwith.

3. The facts of the present Original Application are to be examined in the background of the above Government Orders. The applicant refers to the seniority list for Kozhikode Region published by the Joint Director of Factories and Boilers Department, Kozhikode. The applicant is ranked as third in Annexure A6 seniority list. The applicant claims that the first and second persons in Annexure A6 seniority list had relinquished their right for promotion to the higher post. He refers to Annexure A7 communication in this regard submitted by one Muhammed Ashraf Pari, who is placed as second in Annexure A6 seniority list. No such communication from the person who is ranked first in the above seniority list is seen

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produced. On the other hand, the second ranked person Sri. Muhammed Ashraf Pari in Annexure A6 seniority list has submitted his willingness to be considered for promotion from the State wise seniority list. The applicant submits that since Shri. Muhammed Ashraf Pari has relinquished his right for promotion in the Regional wise seniority list, he cannot opt for State wise promotion, in view of the fact that the state wise promotion is not possible in Factories and Boilers Department. It is his contention that District wise promotion and appointment cannot be possible in Factories and Boilers Department in view of the fact that there are only 3 regional wise offices functioning under the Department and therefore, promotion is to be based on Regional Wise seniority list. The applicant was appointed by the Regional Joint Director of Kozhikode and therefore promotion also should be based on regional wise, it is contended.

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At present, the Department is proposing to proceed with by-transfer appointments based on the State wise seniority list.

4. In the M.A. No. 815 of 2023 submitted by the applicant, it is pointed out that the 2nd respondent has issued a revised seniority list on 24.11.2022 and fixed the seniority of 5 candidates. It is also stated that the Government is initiating steps to merge Factories and Boilers Department with Labour Department and if both the Departments get merged, the applicant's chances of promotion will get curtailed.

5. The applicant has given Annexure A8, A9 and A10 representations before various authorities with a request to promote the applicant through by-transfer appointment on the basis of the above grounds. However, no relief was granted to the applicant.

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6. In the reply statement filed on behalf of the 2nd respondent, it is submitted that the Department does not have offices in all Districts and therefore, seniority list of the employees of this Department is prepared State wise only.

7. In the additional reply statement filed on behalf of the 2nd respondent, it is pointed out that the Department has offices only in 11 Districts. None of the Districts have sufficient cadre strength to prepare District Wise seniority list.

8. In the rejoinder filed by the applicant, the applicant challenges the contentions raised in the reply statement and the additional reply statement, that there are no offices of the department in all districts and hence there is no district wise or regional wise seniority list of employees prepared for the department. In the reply to the query raised by the

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applicant under Right to Information Act, produced as Annexure A14, the 2nd respondent has stated that altogether there are 81 posts of Clerk / Clerk Typist in the department, out of which 25 posts of Clerk / Clerk Typist are reported in Kozhikode Region. Overlooking these facts, the 2nd respondent made appointments from the State wise seniority list during the pendency of this Original Application.

9. In the reply statement filed on behalf of the 1st respondent, it is reiterated that the Factories and Boilers Department follows State Wise seniority list in promotion. Promotion of Clerk / Clerk Typist in the Department is reckoned from the combined State wise seniority list. The Department had a total of 54 Last Grade Servant posts, 6 L.D. Clerk, 45 Clerk Typist and 2 L.D. Typist in the entry cadre. Their appointing authorities are the Administrative Officer in the Head

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Quarters and Joint Directors concerned in all regions.

As the number of non gazetted ministerial staff are low and there are no district wise offices, the department prepared the combined seniority list State wise, and promotions and appointments are considered from that State wise combined list.

10. Heard the learned counsel for the applicant and the learned Government Pleader.

11. In the light of various Government Orders issued from time to time regarding by-transfer appointments of low paid employees to the post of L.D. Clerk / L.D. Typist, it is seen that the options available to the Departments are, either to prepare a District wise seniority list or to prepare a State wise seniority list, the latter option being restricted to those cases where there are insufficient cadre strength in the Districts. Learned Government Pleader points out that the region wise seniority list prepared by the

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Factories and Boilers Department has not been accepted by the Government. From the list of vacancies furnished in the additional reply statement, it is seen that none of the District offices of the Factories and Boilers Department have sufficient cadre strength to qualify for the criteria to prepare District wise seniority list.

12. In the circumstances, the action on the part of the Factories and Boilers Department to prepare Annexure A1 State wise seniority list is seen as just and proper, and we do not see any reason to interfere with it.

In view of the above, the Original Application is dismissed as devoid of merits.

Sd/-

M.R. Sreeletha, Judicial Member

Sd/-

N. Vasudevan, Administrative Member

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APPENDIX



OA-891/2020

APPLICANT'S ANNEXURES:

- Annexure A1- Copy of the Order No.E2-3233/2018 Factories and Boilers department dated 14.01.2019.
- Annexure A2- The copy of G.O(P)No.1/2014/P&ARD dated 03.01.2014 departments for class for employees promotion.
- Annexure A3- The copy of G.O(P)No.16/15 (P&ARD) dated 28.05.2015 notifying that if there is no sufficient district wise cadre strength is available then promotion to the post of LD Clerk/LD Typist can be made as per seniority list.
- Annexure A4- The copy of the G.O(R.T) No.280/2017/P&ARD dated 27.05.2017 cancelling the district wise seniority list and reinstating the state level seniority list.
- Annexure A5- The copy of GO(P)No.4/2020/P&ARD dated 22.01.2020 reinstating district wise seniority list for by transfer appointment of low paid employees to the post of LD Clerk/LD Typist.
- Annexure A6- Copy of the regional seniority list prepared by Kozhikode region.

Annexure
A6(a)-

The copy of the communication send to the Additional Chief Secretary, Labour and Rehabilitation department, Government Secretariat by the director of Factories and boilers department dated 03.01.2017.



Annexure A7-

The copy of the relinquishment letter submitted before Director of factories and boilers by the 2nd Rank holder in the list.

Annexure A8-

Copy of Representation dated 20.08.2020 submitted by the Applicant forwarded by Additional Inspector of Factories, Malappuram District to director of Factories and boilers, Thiruvananthapuram.

Annexure A9-

The Representation dated 10.02.2020 given before the 2nd Respondent, Director, Factories and Boilers, Trivandrum.

Annexure A10-

The Representation dated 10.02.2020 given before the Additional Chief Secretary, Labour and Rehabilitation, Government Secretariat, Thiruvananthapuram.

Annexure A11-

True copy of order No.E1-11409/2021/Fa & Bo dated 24.11.2022 issued by Factories and Boilers Department.

Annexure A12-

A true copy of judgment of this Honourable Tribunal in OA(EKM)No.1905 of 2016 dated 19th March 2021.

Annexure A13-

A true copy of interim order in OA(EKM)No.1853 of 2022 dated 12.12.2022.

Annexure A14-

A true copy of reply issued by 2nd respondent for application under RTI Act.