



GOVERNMENT OF KERALA

Abstract

Higher Education - Technical – Order of Hon'ble Kerala Administrative Tribunal dated 09.01.2019 in OA No 1962/2015 filed before the Honourable Kerala Administrative Tribunal filed by Sri. Muhammed Basheer.V.K, Workshop Instructor Grade-II(Mechanical), Government Polytechnic College, Kozhikkode - Complied with - Orders issued.

HIGHER EDUCATION (L) DEPARTMENT

G.O.(Rt)No.1286/2019/HEDN

Dated, Thiruvananthapuram, 24/07/2019

- Read 1. Representation dated, 21.10.2013 submitted by Sri. Muhammed Basheer.V.K.
2. G.O.(Rt) No. 425/2015/HEdn dated 03-03-2015
3. Order dated, 09.01.2019 in OA No.1962/2015 of Hon'ble Kerala Administrative Tribunal

ORDER

Sri. Muhammed Basheer.V.K, Workshop Instructor Grade II (Mechanical), Government Polytechnic College, Kozhikode has filed an application O.A. No.1962/2015 before Honourable Kerala Administrative Tribunal aggrieved by the reason that due promotion was not given to him as Workshop Instructor Grade II.

2. Honourable Kerala Administrative Tribunal in order read 3rd paper above has set aside Annexure A18 order and directed the 1st respondent to reconsider Annexure A16 representation and pass fresh orders, after affording an opportunity of being heard to the applicant and also ordered that needless to say that the 1st respondent shall give due notice to the persons, who are likely to be affected by any orders to be passed on Annexure A16 representation. Final orders shall be passed within a period of three months from the date of receipt of a certified copy of this order.

3. Annexure A16 representation read as 1st paper above is the representation submitted by the applicant requesting to refix his eligible seniority.

4. The Annexure A18 read as 2nd paper above is the Government Order issued in compliance of the order of the Honourable Kerala Administrative Tribunal in OA No. 1994/2014 filed by Sri. Muhammed Basheer.V.K.

5. Accordingly the applicant was provided a hearing on 25.03.2019. The affected persons along with the applicant and the officials of Directorate of Technical Education were heard again on 05.04.2019.

6. At the time of the hearing the applicant, presented that he acquired the required qualification for the post of Workshop Instructor Grade II (Mechanical) on 22.12.2010. There existed sufficient vacancies in Technical Education Department which had not been reported to PSC during that time. But without considering the above fact, Director of Technical Education appointed candidates advised by PSC from the list which came into existence only on 23.5.2011 which

adversely affected his seniority and was pushed back in the seniority list. He also alleged that appointment and promotion to the post of Workshop Instructor in the other branches such as Electrical, Electronics, Computer Science, Chemical Engineering occurred during the above said period and this also affected his seniority. He approached the Hon'ble Court for the redressal of the grievance of reinstating his lost seniority due to the delay occurred in granting promotion. But Government rejected his claim by stating that though there occurred some administrative delay in preparing seniority lists that did not affect his service adversely and rejected his request for retrospective promotion. It is against this Government Order that he approached the Honourable Kerala Administrative Tribunal. This time too he requested to reconsider his application for reinstating seniority considering the date on which he acquired the qualification and the occurrence of vacancy.

7. The main points put forward by the officials of the Directorate of Technical Education were as follows :

- a) Sri. Muhammed Basheer acquired the required qualification for promotion on 22.10.2010.
- b) Vacancies existed during the period 2009-2010 had been reported to KPSC. Sri. Muhammed Basheer could not claim any right to these vacancies as he had acquired the required qualification only after that.
- c) Seniority list is an indispensable one as far as promotions are concerned. In order to prepare seniority list of the employees a circular has been issued to submit details of qualification and their service up to 31.12.2010 and the provisional list had been published on 31.1.2011 itself. But the complaints regarding the seniority list piled up and it took about 7 months to complete the procedure. Besides, the rank holders also filed a complaint alleging that the department had been initiating steps to promote Trade Instructors who were on probation to the existing vacancies thwarting their chances of employment. All these contributed to the delay in finalising the seniority list. Mechanical Engineering wing has much more staff compared to the other branches of Engineering.
- d) While this exercise was going on Kelala Public Service Commission published the list of selected candidates for Workshop Instructor in Mechanical Engineering on 23.5.2011 and advised 26 candidates for appointment. As the candidates appointed by Kelala Public Service Commission has to be given appointment within 3 months from the date of advice, the department has to appoint these candidates to the existing vacancies.
- e) Candidates advised by Kelala Public Service Commission deserves seniority as per their advice date. But Sri. Muhammed Basheer can claim only those vacancies which arose after acquiring the required qualification to the post of Workshop Instructor and he acquired the qualification only on 22.10.2010.
- f) Those who are promoted to a post which differs entirely from his earlier post in responsibility and nature of work, the seniority can be claimed only from the date of taking charge of that post.
- g) There is no retrospective effect for promotion though there existed vacancies prior to the date of promotion.

8. During hearing the affected persons requested not to entertain the claims of the applicant which will adversely affect their seniority. They had acquired the qualification much earlier than the applicant. They requested Government not to arrive at any decision which will adversely affect their seniority. They stated that they too seek the intervention of Hon'ble Court if their seniority face any threat.

9. Government have examined the matter in the light of the facts of the case and the arguments raised at the time of hearing, with the relevant rules and orders in force. It is observed that though there existed vacancies prior to the acquisition of qualification, one can claim promotion to the vacancy which arise after the acquisition of qualification as the promotion demands difference

in nature of work and responsibility. Besides, the seniority of a person appointed in Government service is determined on the basis of the effective date of advice unless and until any reversion due to disciplinary action has been occurred. Therefore the applicant cannot claim any seniority ahead of the candidates advised by Kerala Public Service Commission and his application is rejected accordingly.

10. The Annexure A16 representation read as 1st paper above is disposed of and the directions in the order read 3rd paper above is complied with accordingly.

(By order of the Governor)
THARUN LAL.S
DEPUTY SECRETARY

The Director of Technical Education, Thiruvananthapuram.
Sri. Muhammed Basheer.V.K, Workshop Instructor Grade II (Mechanical), Government Polytechnic College, Kozhikode (through the Director of Technical Education, Thiruvananthapuram)
The incumbents concerned (through the Director of Technical Education, Thiruvananthapuram)
Advocate General, Vanchiyoore P O, Thiruvananthapuram with CL
The Principals concerned (through the Director of Technical Education, Thiruvananthapuram)
The Principal Accountant General (Audit), Kerala, Thiruvananthapuram
The Accountant General (A&E), Kerala, Kottayam.
Information and Public Relations Department (Web & New Media)
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Mamunji M
Section Officer