



GOVERNMENT OF KERALA

Abstract

LSGD - Engineering Wing – OA No.2116/2016 filed by Sri. Rajaneekanth M., Senior Clerk - Order dated 02.08.2019 of the Hon'ble Kerala Administrative Tribunal- Complied with - Orders issued.

LOCAL SELF GOVERNMENT (EW) DEPARTMENT

G.O.(Rt)No.76/2020/LSGD Dated,Thiruvananthapuram, 09/01/2020

- Read 1 GO(Rt)No.2123/2016/LSGD dated 14.07.2016.
- 2 Order of the Hon'ble Kerala Administrative Tribunal dated 02.08.2019 in OA no.2116/2016 filed by Sri. Rajaneekanth.M., Senior clerck.
- 3 Letter no.A1/10448/16/CE/LSGD dated 23.09.2019 from the Chief Engineer, LSGD.

ORDER

The Hon'ble Kerala Administrative Tribunal as per its order read as 2nd paper above, has set aside the Annexure A6 order, read as 1st paper above and has directed Govt to consider the claim of the applicant and give him proper seniority based on the dates shown in Annexure A1., if necessary, after issuing notice to the affected parties. The Chief Engineer, LSGD has been directed to pass fresh orders considering the claim of the applicant for seniority as senior clerk with effect from 11.03.2008 within three months from the date of receipt of a copy of the order

The gist of the case is as follows:

2. The applicant entered in Government service as LD Clerk in Public Works Department on Compassionate Employment Scheme and joined duty on 23.03.2004. Later, he had opted LSGD Engineering Wing and as such absorbed to LSGD Engg Wing as LD Clerk on 16.10.2012. The promotion of Clerks to UD Clerk from 01.04.1990 to 31.10.2010 was later regulated in PWD as per proceedings dtd 30.04.2013 of the Chief Engineer, PWD (Annexure A1 order) and in that order the applicant was given the date of effect of promotion as UD Clerk in PWD with effect from 11.03.2008.

3. Pursuant to the said proceedings of the CE, PWD, the applicant had requested (as per Annexure A3) to grant him promotion as UD Clerk in the LSGD Engg Wing with retrospective effect, ie w.e.f 11.03.2008 and filed OA no.224/2016 before the Hon'ble KAT in this regard. Later in compliance with the order of the KAT in OA 224/2016, the request of the applicant for retrospective promotion was considered in detail and declined the same as per Annexure A6 order (GO(Rt)no.2123/2016/LSGD dtd 14.07.2016), citing that the preparation of seniority list and granting of promotion are vested with the Chief Engineer, LSGD, being the Head of the Department as he was permanently absorbed in the LSGD Engineering Wing as LD Clerk and also that the

settled seniority among the clerks in the LSGD Engineering Wing will be scuttled if the order of the promotion of the PWD is implemented in LSGD.

4. Challenging GO(Rt)no.2123/2016/LSGD dtd 14.07.2016 (Ann A6), the applicant filed OA no.2116/2016. In the light of the KAT order in OA no.2116/2016, the CE, LSGD, as per letter read as 3rd paper above has reported that Annexure A1 order and in turn effect of the date of promotion provisionally assigned to the applicant in PWD w.e.f 11.03.2008 was quashed by Govt in PWD vide GO(Rt)no.1796/2015/PWD dated 03.12.2015 following the directions of the Hon'ble KAT in another OA, ie OA no. 2217/2014 filed by the aggrieved parties in PWD who are challenging the above date of promotion to be assigned to the applicant.

5. Based on the above decision of Govt in PWD, as per proceedings dated 29.03.2017, the CE, PWD himself quashed his order dated 30.04.2013, wherein the applicant has been given promotion as UD Clerk w.e.f 11.03.2008. In this scenario, the CE, LSGD has expressed his inability in reviewing the seniority on the basis of the order dated 02.08.2019, in OA filed by the applicant since the same has been finalised following the decision of Govt in GO(Rt)no.1796/2015/PWD dated 03.12.2015, which is also being issued in compliance with the order of Hon'ble KAT in another OA filed by those who are aggrieved with the above placement of the applicant.

6. In the seniority list being prepared by the CE, PWD, the applicant has been given the date of promotion of UD Clerk w.e.f 10.10.2010 only, which is said to be the date of acquiring his qualification to be considered for promotion as UD Clerk. In the final seniority list published on 07.07.2017, he has not been figured as eligible for promotion to the cadre of UD Clerk as his claim is not in order.

7. Government have therefore re-examined the case in detail in the light of the KAT direction in OA no.2116/2016 and the following points are found.

i. The date of promotion in the cadre of UD Clerk assigned to Sri. Rajaneekanth w.e.f 11.03.2008 by the PWD was later reviewed by that department itself in Govt vide GO(Rt)no.1796/2015/PWD dated 3.12.2015 following the order of the KAT in the OA no.2217/2014, filed by the parties who are aggrieved with the above placement of the applicant.

ii. The above said action of the CE, PWD annulling his order dated 30.04.2013 issued vide no.review committee/2568/2016 dated 29.03.2017 has been issued after complying with all procedures to be fulfilled in this regard.

iii. The above order wherein the applicant has been given promotion as UD Clerk only w.e.f 10.10.2010 (after reassigning his seniority) has been issued after obtaining the objections of the aggrieved, including the applicant.

iv. After that formality, the final order has been issued on 07.07.2017 by the CE, PWD, wherein the applicant's place is reiterated as such (ie w.e.f 10.10.2010 only).

v. The prayer of the applicant and the spirit of the order of the KAT in OA filed by him is to restore his seniority w.e.f 11.03.2008.

vi. As the plea of the applicant is to restore his seniority based on a quashed order and the new seniority list has been issued in consonance with Govt decision in PWD in view of the order of the KAT, it is seen therefore that the demand of the applicant is not tenable.

vii. It is also found that the review committee is seen upheld the decision in giving promotion to the applicant w.e.f 10.10.2010 instead of 11.03.2008 and the same was done after verifying the objections/claim of the applicant.

viii. In this scenario, it may clearly be presumed that the actual date of promotion of the applicant in the cadre of UD Clerk in his parent department (PWD) would be 10.10.2010, had he continued there. (If he is not opting to LSGD Engineering Wing and decide to continue in his parent Dept)

ix. In such a context, the demand of the applicant for a seniority w.e.f 11.03.2008 based on a previous order will not withstand since such an order has subsequently been re-examined and quashed whereby his seniority is refixed/reassigned.

8. In view of the above circumstances, Government is not in a position to grant the seniority to the applicant as directed by the Hon'ble KAT in its order read as 2nd paper above due to the above factual reasons. It is therefore ordered that the seniority of the applicant in the cadre of UD Clerk will be the same as already fixed by the Chief Engineer, LSGD and the order read as 2nd paper above is thus complied with.

(By Order of the Governor)
BIJUKUTTAN. M.S
ADDITIONAL SECRETARY

To

- 1 Sri. Rajaneekanth M., Senior Clerk, (*through the Chief Engineer, LSGD*)
- 2 The Advocate General, Thiruvananthapuram (with Covering Letter).
- 3 The Chief Engineer, LSGD, Thiruvananthapuram.
- 4 The Accountant General,(A&E/Audit) of Kerala, Thrissur
- ✓ 5 The Executive Director, Information Kerala Mission.
- 6 The Web & New Media, I & PRD.
- 7 Stock File/Office Copy.

Forwarded /By order

Signature valid

Digitally signed by RAJANEKANTH M
Date: 2020.06.08 11:07:48 IST
Reason: Approved

Section Officer