

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00161/2017

Monday, this the 8th day of February, 2021

CORAM:

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

A Gheevarghese, aged 43 years, S/o.A.Alphonse
Turner, Marine Engineering Division, Fishery Survey of India
Fore Shore Road, Cochin 682 016, residing at "Muthiravilla House"
Janatha Road, Vytila P.O, Cochin – 682 019 ...Applicant

(By Advocate Mr.Shafik M.Abdulkhadir)

versus

1. Union of India, represented by Secretary
Department of Animal Husbandry, Dairying
and Fisheries, Ministry of Agriculture, New Delhi – 110 001
2. The Director General
Fishery Survey of India, Plot No.2 A
Unit No.12, Sassoon Dock, Colaba, Mumbai – 400 005
3. The Zonal Director
Fishery Survey of India, Kochi – 682 016
4. S.Kalesan, aged 53 years
S/o.M.K.Sreedharan, Milling Machine Operator
Fishery Survey of India, Kochangadi
Kochi – 682 005
Residing at:"Gowri Bhavan"
No.16/1981-B, St.Mary's Chappel Road
Thoppumpady, Kochi – 682 005

(By Advocate : Mr.N.Anilkumar,SCGSC for R 1-3, Mr.T.C.Govindaswamy for R4)

This application having been heard on 27th January 2021, this Tribunal on 8.2.2021 delivered the following :

ORDER

HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER

This is an Original Application filed seeking the following relief:

- "(i) To call for the records relating to Annexure A-1 to A-9 and to declare that the preference given for Milling Machine Operator under Column 12 of the Schedule and the Note (A) of A-1 Recruitment Rules are discriminatory and against the equality clauses under Article 14 and 16 of the Constitution of India;*
- (ii) To quash A-1 Recruitment Rules to the Extent it gives preference for Milling Machine Operator under Column 12 of the schedule and the Note (A) being arbitrary and discriminatory;*
- (iii) to direct the respondents to amend the Recruitment Rules in order to give equal opportunity to all feeder cadres;*
- (iv) To direct the respondents to conduct promotion to the cadre of Asst. Foreman (Machine Shop) only after amendment as prayed for in prayer (III) and to consider the applicant also on equal terms with Milling Machine Operator;*
- (v) To issue appropriate order or direction to the respondents which this Hon'ble Tribunal deems fit, just and proper in the circumstances of the case;*
- (vi) To award costs of this proceedings to the applicant. "*

2. The applicant in this case was working as a Turner in the Integrated Fisheries Project (**IFP** for short) at Cochin from 18.2.1999 onwards. He has passed Diploma in Mechanical Engineering in 2007. Subsequently, there has taken place a reorganization and the employees from IFP have been amalgamated with Fishery Survey of India (**FSI** for short) as per the order of the Agriculture Ministry dated 19.5.2005. The said order is produced as Annexure A-2 in this Original Application. His pay was fixed as Rs.5200-20200 with Grade pay of Rs.1900/- with effect from 1.1.2006. He was also granted 1st MACP with effect from 18.2.2009 and his present Grade Pay is Rs.2000/-.

3. At present, the applicant is aggrieved by the provisions of the Recruitment Rules (**Integrated Fisheries Project (Assistant Foremen) Recruitment Rules, 1987**) for promotion to the post of **Assistant Foreman (Machine Shop)** of the Fishery Survey of India. According to him, the said Rule excludes Turners from getting promotion to the post of Assistant Foreman (Machine Shop). He has 17 years of service as Turner and has Diploma in Mechanical Engineering. The applicant was fully eligible for promotion to the post of Assistant Foreman (Machine Shop) in IFP. According to him, in IFP, the post of Turner is the feeder category for promotion to the post of Assistant Foreman (Machine Shop). After the amalgamation, a new Recruitment Rule was introduced in the FSI as mentioned earlier in 1987 and at present, the Turner working in the FSI will not get any promotion to the post of

Assistant Foreman (Machine Shop). As per the Rules, on every occasion of promotion, the eligibility list has to be prepared duly placing the employees holding the position of Milling Machine Operators above the others. There is only one post of Assistant Foreman (Machine Shop). So one Milling Machine Operator will get promoted as Assistant Foreman (Machine Shop). The Turner who in the feeder category is discriminated and he will not get a promotion to that post. Further, the applicant in this case has raised an objection stating that when the FSI was amalgamated, there was an undertaking that the promotion facilities of the employees from IFP will not be affected. The Recruitment Rules violates the said undertaking vide Annexure A-4 statement filed by the Department and it is arbitrary.

4. The respondents entered appearance and filed a detailed reply statement denying the allegations made in the Original Application. They admitted that the employees of the IFP were transferred to FSI as stated by the applicant with effect from 30.9.2005. There were about 32 categories of posts belonging to the Workshop and 25 categories of posts were not common to those available in the FSI. In respect of the common posts also, the method of recruitment, feeder grade for promotion etc. prescribed in the Recruitment Rules of the IFP varied. Hence a thorough review of the then existing Recruitment Rules for both the Institute were found necessary. Hence the present Recruitment Rules were framed. The applicant was working as Turner in the IFP and he was transferred to FSI as a Turner. On completion of 10

years of regular service, the applicant was granted 1st financial upgradation also. According to the respondents, as per the Recruitment Rules for the post of Assistant Foreman (Machine Shop), the feeder category demarcated as follows:

"(i) the Milling Machine Operator in the Pay Band (PB-2) of Rs.5200-20200/- + Grade Pay of Rs.2400/- with ten years in the grade after appointment thereto on regular basis or a combined service of eighteen years in the post of Milling Machine Operator in the Pay Band (PB-1) Rs.5200-2000 + Grade Pay of Rs.1900 put together.

Or

(ii) Turner and Machinist in the Pay Band (PB-1) of Rs.5200-20200 with Grade Pay of Rs.1900 with Diploma in Mechanical Engineering with ten years regular service in the grade and those with Industrial Training Institute Certificate in Machinist / Turner Trade with fifteen years of service and those without Industrial Training Institute Certificate with 20 years service of regular service."

5. The respondents have admitted that in IFP, a Turner can be appointed as an Assistant Foreman (Machine Shop). As per the Recruitment Rules of 1987, the Milling Machine Operators, Machinist and the Turners are made eligible for promotion if they have the required service and qualifications. According to them, there is no discrimination and there is no reason to interfere with the Recruitment Rules framed in the year 1987.

6. This Tribunal had earlier disposed of this Original Application on 26.2.2018 holding that **there is no valid ground raised by the applicant in this case**. The

applicant took up the matter before the Hon'ble High Court by filing OP(CAT) 52/2018. Though the Hon'ble High court has concurred with some of the findings of the Tribunal, it was observed that the legality of Note-(a) to Column 12 of Annexure A1 Rules is sustainable is the main issue in this case and the Tribunal has not specifically considered this question in the judgment and hence the Hon'ble High Court has remanded the case back to the Tribunal for the limited purpose of considering the question formulated above. It was directed that the **Tribunal should consider whether the preference giving to the Milling Machine Operator as per Note-(a) to Column 12 of Annexure A-1 Recruitment Rules is valid and sustainable.** It was also ordered that the interim order of status quo granted on 16.3.2018 will continue till the disposal of this O.A. Hence the matter was restored and the matter came up for hearing before this Tribunal.

7. We have carefully gone through the pleadings and various documents produced in this case. We have also heard the counsel Adv.Mr.M.A.Shafik for the applicant, Adv.Mr.N.Anilkumar,SCGSC, learned counsel for respondent nos.1 to 3 and Adv.Mr.T.C.G Swamy, learned counsel for respondent no.4..

8. The main contention of counsel for the applicant is that as per the Recruitment Rules produced as Annexure A-1, the feeder category for promotion to the post of **Assistant Foreman (Machine Shop)** is shown in Column 12 as follows:

"(i) Milling Machine Operator in the pay scale of Rs.5200-20200/- + Grade Pay of Rs.2400/- with five years service in the grade after appointment thereto on regular basis or a combined service of eight years in the post of Milling Machine Operator and Machinist in the pay scale of Rs.5200-2000 with Grade Pay of Rs.1900 put together.

Or

(ii) Turner and Machinist in the pay scale of Rs.5200-20200 with Grade Pay of Rs.1900 with Diploma in Mechanical Engineering with five years regular service in the grade and those with Industrial Training Institute Certificate in Machinist

Or

(iii) Turner Trade with ten years of service and those without Industrial Training Institute Certificate with 15 years service.

Note : (a) On each occasion of promotion, the eligibility list shall be prepared duly placing the employees holding the post of Milling Machine Operator above the others as per the seniority position in respective posts.

(b) Among the Turners and Machinists, the eligibility list shall be prepared on the basis of the date of completion of the number of years of minimum service required in the respective posts. "

9. According to the counsel for the applicant, as per Note (a) of Column 12, it is specifically stated that on each occasion of promotion, the eligibility list shall be prepared duly placing the employees holding the post of Milling Machine Operator above the others as per the seniority position in respective posts. In Note (b) it is stated that among the Turners and Machinists, the eligibility list shall be prepared on the basis of the date of completion of the number of years of minimum service

required in the respective posts. According to him, the applicant in this case had put in more than 17 years of service as Turner and if the eligibility list is prepared as per Note (a), the applicant will not get a promotion in his entire service. The promotion will go to Milling Machine Operator and then to the Machinist. Since there is only one post, the possibility of applicant getting a promotion is absolutely nil.

10. The applicant in this case had joined FSI on the basis of an understanding that he will be provided with all promotional avenues. In IFP, a Turner can directly be promoted to the post of Assistant Foreman (Machine Shop). In the new Recruitment Rules framed after the amalgamation, the feeder category for Assistant Foreman (Machine Shop) starts from Milling Machine Operator, then Turner and Machinist. So the Turner will never get any promotion and this is arbitrary and discriminatory in nature. But on the other hand, counsel for the respondents contends that as per the requests of the employees and owing to the difficulties experienced by the Department, the department has formulated a fresh Recruitment Rules for the post of Assistant Foreman (Machine Shop) as **Integrated Fisheries Project (Assistant Foremen) Recruitment Rules, 1987** under **Article 309** of the Constitution of India superseding the earlier Recruitment Rules and a Turner was added as a feeder category in the new Rules also for promotion. According to the counsel for the respondents, the Note appended as (a) and (b) are only a proposal as to how the list has to be prepared for consideration of promotion. As per the Recruitment Rules, a

Milling Machine Operator has the pay scale of Rs.5200-20200 with Grade Pay of Rs.2400/-. As regards the Turnier and Machinist are concerned, their Grade Pay is only Rs.1900/-. So the Machinist and Turner comes below the Milling Machine Operator and it is only because of that, a Note has been added for the purpose of preparing the eligibility list. It clearly states that the employees holding the post of Milling Machine Operator has to come in the first position and then the Machinist and Turner. There is no illegality or discrimination in this arrangement as the Milling Machine Operator draws more Grade Pay than a Machinist or a Turner. It may be true that owing to the paucity of vacancies, the Machinist or a Turner may not get promotion as expected by them. If the number of vacancies are increased, they will also get a chance for promotion in a speedy manner. This is not sufficient to hold that Note (a) and (b) to Column 12 of the **Integrated Fisheries Project (Assistant Foremen) Recruitment Rules, 1987** is invalid or not sustainable. It has only made a reasonable clarification for consideration of those persons eligible for promotion.

11. On a perusal of the pleadings and records, we find that the applicant was earlier appointed as Turner in the IFP and when the IFP was amalgamated with FSI, he was posted as Turner in the Machine Shop of FSI. Subsequently, owing to the differences in the Recruitment Rules and difficulty in giving promotions, the respondent Department had framed a fresh Recruitment rules by name " **Integrated Fisheries Project (Assistant Foremen) Recruitment Rules, 1987**" . The Hon'ble High Court

has directed this Tribunal to consider the point whether Note-(a) to column 12 of Annexure A-1 Recruitment rules is valid and sustainable.

12. On a perusal of the Recruitment Rules, we can see that there exists three categories as feeder category for the post of Assistant Foreman (Machine Shop). The first category is **MillingMachine Operator** in the pay scale of Rs.5200-20200 with GP 2400 with five years experience. It also provides for a combined service of eight years in the post of Milling Machine Operator and Machinist n the Grade Pay of Rs.1900. It also provides an opportunity to the **Turner** and **Machinist** in the Grade Pay of Rs.1900 with Diploma in Mechanical Engineering with five years regular service in the grade. It also provides for Turner Trade with ten years of service and those without Industrial Training Institute Certificate with 15 years service. So we can see that there exists three categories of personnel who can be promoted as Assistant Foreman (Machine Shop) in this case. Upper most category is the Milling Machine Operator who has a Grade Pay more than the Machinist and Turner i.e, Rs.2400/- with 5 years service. So if there is a Milling Machine Operator due for promotion, his name has to come up in the first, then the name of Turner, Machinist and Turner with I.T.I certificate etc. What Note (a) describes is on each occasion of promotion, the eligibility list shall be prepared by placing the employees holding the post of Milling Machine Operator who is the seniormost with more Grade Pay than others in the first and thereafter the Machinist and Turners as per the seniority

position in the respective post. Hence the respondents had made a reasonable classification to prepare a list of eligible persons for promotion and it cannot be considered as a discrimination against the Turner in this case. Further, as per the Recruitment Rules, the post of Assistant Foreman (Machine Shop) is the only one post . It is also specifically stated that the number of post may increase subject to variation depending on workload. If the number of Assistant Foreman (Machine Shop) are increased, the possibility for promotion of Milling Machine Operator and Machinists and Turners will also go up. At present, there exists only one post and it is true that the applicant may not get a promotion immediately, if there exists a Milling Machine Operator.

13. In this view of the facts mentioned above, we find that there is absolutely no discrimination or arbitrariness in Note (a) under column 12 of Recruitment Rules. We do not find any arbitrariness or discrimination involved in the Recruitment Rules framed in 1987. In fact, the Rules had provided an opportunity for Turners also for aspiring to the post of Assistant Foreman (Machine Shop). But it is true that the number of post is only one and it made great difficulties for all the aspirants for getting promotion. So we find that Note (a) under Column 12 of the Recruitment rules is valid and sustainable . There is nothing to interfere in the above Note (a) and (b) as alleged by the applicant. Hence the Original Application lacks merit and it is disposed of accordingly. No

costs.

14. The interim order dated 16.3.2018 stands vacated forthwith. M.A 180/660/2017 for vacating interim order is disposed of.

(K.V.EAPEN)
ADMINISTRATIVE MEMBER
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(P.MADHAVAN)
JUDICIAL MEMBER

List of Annexures

Annexure A1 – True copy of the Recruitment Rules of Assistant Foreman (Machine Shop) issued by the 1st respondent, published in the Gazette of India on 22.8.2009.

Annexure A2 – True copy of the order No. 5-16/2002-Fy.(T-5)(II) dated 19.5.2005 issued by the Under Secretary of the 1st respondent

Annexure A3 – True copy of the office order No. F.1-38/2010 E.II dated 31.1.2011 issued by the 2nd respondent.

Annexure A4 – True copy of the statement dated 23.8.2005 of the Director, IFP before the Asst. Labour Commissioner (Central) Ernakulam.

Annexure A5 – True copy of the statement dated 25.8.2005 of the Director, IFP before the Asst. Labour Commissioner (Central) Ernakulam.

Annexure A6 – True copy of the Recruitment Rules of Asst. Foreman (Machine Shop) 1988 of the IFP.

Annexure A7 – True copy of the brief description of the duties of Milling Machine Operator published by the respondents.

Annexure A8 – True copy of the brief description of the duties of Turner published by the respondents.

Annexure A9 – True copy of the representation dated 13.10.2016 submitted by the applicant.

RESPONDENTS' ANNEXURES

Annexure R1(a) - True copy of the OM notification dated 28.7.2009.

Annexure R1(b) -True copy of the order dated 19th May, 2005.

Annexure R1(c) - True copy of the Annexure-I of OM dated 9.8.1999.

Annexure R4(a) - True copy of interim direction in OA No. 180/00161/2017 dated 08.03.2017 rendered by this

Hon'ble Tribunal.

Annexure M.A.1 - A true copy of representation dated 17.11.2016, addressed to the Director General, FSI, Mumbai

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