

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.434/93.

Thursday, this the 3rd day of March, 1994.

C O R A M

HON'BLE SHRI N DHARMADAN, JUDICIAL MEMBER

HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

.....

P Manoharan,  
Chief Engineer Grade II,  
CIFNET Unit, Fishing Harbour,  
Vishakapatnam-1.

.....Applicant

By Advocate Shri K Ramakumar.

Vs.

1. Union of India represented by the  
Secretary, Ministry of Agriculture,  
New Delhi.

2. The Director, Central Institute of  
Fisheries, Nautical Engineering  
and Training (CIFNET), Cochin--16.

.....Respondents

By Shri CN Radhakrishnan, Addl Central Govt Standing Counsel.

O R D E R

N DHARMADAN, MEMBER (J)

Applicant, a Chief Engineer Grade II on board MV Skipper III, is aggrieved by the impugned orders at Annexure I, J, K and O by which he has been appointed as Chief Engineer Grade I on board the vessel 'Prashikshani' on various spells in the exigencies of service but denied pay fixation thereto.

2. The facts are not in dispute. The applicant was qualified to be appointed as Chief Engineer. Accordingly, he has been promoted as Chief Engineer Grade I with effect from 3.6.1991. He was incharge of the fishing vessel MV Prashikshani as his services were utilised as Chief Engineer Grade I from 3.6.1991 till 31.8.1992. According to him, even when the ship was on the shore, he was acting as Chief Engineer of the vessel, but he was paid low remuneration. He relied on Annexure A & B and claimed fixation of pay under FR 22(1)(a)(1) in the grade of Rs.3000-4500 for the period 3.6.1991 to 31.8.1992.

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3. His request for getting higher fixation of pay was rejected. The orders passed with retrospective effect denying the benefit of fixation of pay are produced in the OA as Annexure I, J, K and O. Respondents submit that these orders were issued in exercise of the powers under FR 35, which reads as follows:-

"The Central Government may fix the pay of an officiating Government servant at an amount less than that admissible under these rules."

Learned counsel for respondents also brought to our notice Government of India's order dated 29th July, 1987.

"(2) Restriction of officiating pay under FR 35 in cases of cadre promotions not on regular basis.....

2. It has been decided that in cases of appointments on promotion in the normal line within the cadre, but which are not on regular basis, the pay may be restricted under FR 35 so as not to exceed the basic pay by more than the amounts shown below -

(a) For employees in receipt of basic pay above Rs.2200.	12-1/2% of basic pay or Rs.330/- whichever is more.
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....."

4. Respondents have submitted that the services of the applicant were utilised by appointing him as "Chief Engineer Grade I in the scale of Rs.3000-4500 on several occasions according to the requirements". They further submitted that the earlier OAs 838/90 and 967/91 were dismissed. Hence the claim of applicant is barred by resjudicata and this OA is liable to be dismissed.

5. The contention that the applicant's claim is barred by resjudicata cannot be sustained on the facts of the case. Earlier OAs were filed by <sup>the</sup> applicant for different reliefs and they do not cover the reliefs claimed in this OA. In this application he challenges the orders passed in the years 1992-93 giving retrospective effect from earlier dates for denying regular pay scale applicable to the applicant for his work done in the capacity as Chief Engineer Grade I in the exigency of work as admitted by the respondents in the reply statement. The cause of action which arose in this case is different and distinct from the

contd.

cause of action considered by the Tribunal in the earlier OAs  
aforementioned. In this view of the matter, we are satisfied that the  
principles of resjudicata, ~~much less~~ constructive resjudicata do not  
apply in the instant case and we reject the contentions of the  
respondents in this behalf.

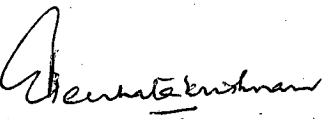
6. Learned counsel for applicant relying on FR 22(1)(a)(1) submits  
that the applicant is eligible for fixation of pay under the same rule  
in view of the fact that he has been posted as Chief Engineer Grade I  
during the aforementioned periods in the exigency of the work after satis-  
fying the eligibility conditions, and hence the denial of fixation under  
FR 22(1)(a) is illegal particularly when the applicant is qualified to  
be considered for provisional appointment as Chief Engineer Grade I, but  
under Annexure R5 Recruitment Rules for regular promotion as Chief  
Engineer Grade I, the applicant should satisfy a further condition of  
seven years of regular service as Chief Engineer Grade II which is  
lacking in the case of the applicant. However, it is admitted that the  
applicant was given the posting as Chief Engineer Grade I during the  
period from 3.6.1991 to 31.8.1992 on several occasions considering the  
requirements of the vessel and necessity of posting him as such in the  
exigency of work. It is not the case of respondents that individual  
orders were issued then and there fixing the period of operation of the  
ship and served copy to the applicant as and when required to man the ship  
as Chief Engineer Grade I. In the instant case, after his work as Chief  
Engineer Grade I, applicant was told retrospectively by the impugned  
orders that he was given posting as Chief Engineer Grade I only during  
the period referred to in the impugned orders and for other periods, he  
will be treated as Chief Engineer Grade II with lesser scale of pay.


7. But according to the applicant, irrespective of the necessity  
of the job and running of the ship, he was acting throughout as Chief  
Engineer Grade I even during the period when the ship was idle at shores,  
in the absence of any other qualified person, to work and manage this ship  
as Chief Engineer Grade I and hence, he is entitled to the pay scale of  
Chief Engineer Grade I for the period <sup>from</sup> 3.6.1991 to 31.8.1992.

8. We are not examining the contention as to whether FR 22(1)(a) or FR 35 applies on the facts and circumstances of the case. It is not necessary at this stage to go into these details in the view that we are taking in this case for disposal of the same. Admittedly, the impugned orders were passed in <sup>such a manner that they</sup> ~~in a manner~~ would adversely affect and will have civil consequences on the applicant. They had been passed without giving any prior notice or an opportunity of being heard. Accordingly we are satisfied that principles of natural justice have been violated and the impugned orders threaten recovery from the applicant which cannot be enforced at this stage particularly when the applicant was not given an opportunity of being heard in this behalf.

9. Accordingly, having regard to the facts and circumstances of the case, without going into the merits of the case, we allow the OA and set aside the impugned orders, for they have not been issued in a fair manner after following the normal procedure and hence, the orders challenged in this case are violative of the principles of natural justice and illegal.

10. In the result, the Original Application is allowed. There will be no order as to costs.

  
PV VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER

  
N DHARMADAN  
JUDICIAL MEMBER  
3.3.94.

03.3.1994