

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 471/2008

Dated this the 4th day of November, 2009.

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

R. Balakrishnan S/o V.K. Raghavan
Deck Hand (Auxiliary) Central Marine
Fisheries Research Institute
Tatapuram PO, Cochin-682 014
Permanent Address: Sadgamaya
Nangiaarkulangara PO
Harippad, Alleppey-690 513

Applicant.

By Advocate Mr.T.C. Govindaswamy

Vs

1. Indian Council of Agricultural Research
Krishi Bhavan
New Delhi-110 001
2. The Director
Central Marine Fisheries Research Institute
Tatapuram PO
Cochin-682 014
3. The Senior Administrative Officer
Central Marine Fisheries Research Institute
Tatapuram PO
Cochin-682 014

..Respondents.

By Advocate M/s Varghese & Jacob (Shri Varghese M. Eso)

The Application having been heard on 20.10.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a Deck Hand (Auxiliary) in the Central Marine Fisheries Research Institute (CMFRI) is aggrieved by the refusal of the respondents to treat him as one belonging to the Technical Services.

2 The facts in brief are that the applicant who was initially engaged as a casual Deck Hand was appointed on regular basis w.e.f. 13.10.1984 and is still continuing in the same post. He has the educational qualification of Xth Std. Failed, Fisheries Training Course Certificate, Certificate of Competency for service as Engine Driver and Certificate of competency as Lascar. According to the applicant, the posts in CMFRI shall be categorised as Scientific, Technical, Administrative, Auxiliary and Supporting. The post of Deck Hand was included in the Technical Services as Sl. No. 98. In Group-I Field/Farm Technicians was replaced by new pay scale of Rs 260-430 which was merged with category II with new pay scale of Rs. 260-350. The Technical services are grouped into three categories in the following grades:

<u>Category</u>	<u>Grade</u>	<u>Scale of pay</u>
Category -I	T-1	Rs. 260-430
	T-2	Rs. 330-560
	T-1-3	Rs. 425-700

All posts, the incumbents of which are engaged in performing technical services in support of research and education whether in laboratory workshop or field, etc constitute the Technical service. The minimum educational/trade qualifications for entry to different categories are shown in Appendix IV of the Technical Services Rules. A large number of non-matric technical personnel were inducted w.e.f. 1.10.1975. The qualifications are not essential for initial adjustment of existing permanent

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and temporary employees appointed through regularly conducted DPC/Selection Committee. The Recruitment Rules to the post of Deck Hand were framed in 1988(A-3) but practically no appointments took place on the basis of the rules, the cadre of Deck Hand continued to be treated as Auxiliary. Since there were many disparities and irregularities in the reclassification of the posts, the issue was discussed with Staff Council meeting and ultimately referred to Boards of Arbitration. In terms of the Arbitration Award, ICAR classified 16 posts as Technical and 14 posts as administrative w.e.f. 23./11.94 (A5). In terms of A-5, the Deck Hands were provided with the scale of pay of Rs. 975-1540 and Rs. 1200-2040 in the Technical Services. (A-5 and A-6). The unscientific approach of the Arbitration Award led to setting up of another Committee (A-8). The Committee after due deliberations recommended classification of 46 posts as Technical, 15 posts as administrative and 10 posts as Supporting Staff which was accepted by the Governing Body (A9). The Deck Hands in the scale of Rs. 825-1200 were classified as Supporting Staff and Deck Hands in the higher scale were classified as Technical. On various occasions the Council had relaxed the minimum educational/trade qualification prescribed in the case of Boat Crews. (A-10, A-11 and A-12). The applicant was given option to come over to the Technical Services (A-13). Immediately on receipt of which he exercised his option on 4.1.99 (A-14), but it was not accepted. He filed O.A. 1125/99 before this Tribunal which was dismissed. The order of dismissal was challenged before the High Court through OP No. 25186 of 2002 which was disposed of with a direction to the respondents to reconsider the matter(A-17). The competent authority dismissed the claim of the applicant (A-18). Hence he has filed this O.A. to quash A-9 to the extent it re-classifies Junior Deck Hands/Deck Hands, to quash A-18, to declare that the applicant is entitled to be included as Technical Staff in Category-I and for consequential benefits on the grounds that the decision was taken without notice, the qualification of Matriculation is not essential, there was no terms of reference as regards question whether Deck Hand

(Auxiliary) is to be treated or included in the Supporting Staff category or not, inclusion of Deck Hand in Supporting Staff is not based on any materials, the nature of duties of Deck Hands is technical in character, A-9 is illegal to the extent it relates to the Junior Deck Hands/Deck Hands in the scale of Rs 825-1200.

3 The respondents opposed the O.A by filing reply statement. They submitted that the posts available under the ICAR were classified in to 5 categories viz. Scientific, Technical, Administrative, Auxiliary and Supporting. A Committee under the Chairmanship of Dr. Kirti Singh was constituted by the 2nd respondent for classification/reclassification of posts, etc. The Committee had recommended to abolish the posts in Auxiliary and Administrative(non-ministerial) categories. On abolition of Auxiliary category, the posts available in this category were reclassified into Technical/Administrative/Supporting categories. The posts of Deckhand / Junior Deckhand in the pay scale of Rs 825-1200 were reclassified as Supporting category. It was further clarified that the pay scale of Rs. 825-1200 of this post will be applicable only to those incumbents who are working against the post and that future vacancies will be filled up in the scale of Rs 750-940 (R-1). The applicant was appointed to the post of Deckhand under Auxiliary category in the pay scale of Rs. 825-1200 w.e.f. 13.10.1994. On abolition of Auxiliary category he was fitted to Supporting category Grade-IV having the same pay scale. The Annexure A-18 order has been passed pursuant to the direction of the High Court in OP NO. 25186/02.

They further submitted that the applicant was appointed as Deckhand (Auxiliary) w.e.f. 13.10.94 based on the order of this Tribunal in O.A. 69/92 and not on the recommendation of a regularly constituted DPC. He had accepted the terms and conditions of service stipulated in the offer of appointment. They submitted that fitment made based on the orders of reclassification was applicable only in corresponding grades/pay scales. The

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post of Deckhand in the pay scale of Rs. 975-1540 in the CIFE, Mumbai was reclassified as Administrative (Non-ministerial) was reclassified as Technical as per Annexure A-9 dated 20.8.96. They submitted that no provision exists for grant of higher pay scale under Technical category to those who were till then holding lesser pay scale. Those Deckhands who were in the administrative (Non-ministerial) category with the pay scale of Rs. 975-1540 were reclassified as Technical Category. This was not made applicable to those drawing lower scale like the applicant.

4 The applicant filed rejoinder reiterating the contentions in the O.A. and opposing the averments in the reply statement. He submitted that Annexure R-1 is not applicable in the case of the applicant since he was recruited in Auxiliary category and not in supporting services. He has specifically pointed out the case of one Shri V. Ramachandran working in CIFT Kochi as Cook (Auxiliary) in the pay scale of Rs. 825-1200 has subsequently got the scale of pay of Rs. 950-1540 (Annexure A-20)

5 The respondents filed additional reply to the rejoinder reiterating that the Board of Arbitration was constituted for abolition/reclassification of Auxiliary category posts and not authorised for grant of pay scales. The Board recommended reclassification of Deckhand posts in the pay scales of Rs. 1200-2040 and 975-1540 Administrative(Non-Ministerial). Dr. Kirti Singh Committee had recommended for reclassification of Deckhand (Auxiliary) posts in the pay scale of Rs. 825-1200 as supporting category. They further submitted that Technical service relates to existing Technical personnel and not to personnel who were holding Auxiliary post and that grant of higher pay scale would require upgradation/creation of post from Group-D to Group-C. They further submitted that the applicant has filed this O.A. with the very same appeal which has been dismissed by this Tribunal.

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6 We have heard learned counsel for the parties.

7 The applicant was recruited as a Deckhand in the scale of Rs. 825-1200. On abolition of the post of Deckhand and reclassification he is entitled to be allocated to a post which carries identical scale of pay or which is equal to the post which he is holding. The appointments in the institutes under ICAR were made in various categories on the basis of qualifications. The applicant possess the qualification prescribed under the recruitment rules at Annexure A-3 for the post of Deckhand. Hence he was appointed as Deckhand under Auxiliary category. The Kriti Singh Committee constituted for considering various issues related to classification /re-classification of posts recommended to abolish the posts in Auxiliary. On abolition the posts of Junior Deckhand/Deckhand were reclassified as Supporting Category treating the pay scale personal to the incumbents and that future vacancies will be filled up only in the pay scale of Rs. 750-940. When the option of the applicant to be categorised as Technical was rejected, he approached this Tribunal through O.A.1125/99 with the following reliefs:

- i) Set aside Annexure A-7 issued by the 4th respondent
- ii) Declare that the applicant is entitled to be inducted as Deckhand in the technical functional group in the pay scale of Rs. 975-1540 with effect from 29.6.96.
- iii) Direct the respondents to induct the applicant as Deckhand in technical functional group in the scale of pay of Rs. 975-1540 with effect from 29.9.96 and disburse the arrears with interest and
- iv) Such other reliefs as this Hon'ble Tribunal deems fit and proper.

The O.A. was dismissed by the Tribunal whereupon he filed OP NO.25186/02 before the High Court which directed the competent authority to reconsider the matter. The competent authority rejected the claim of the applicant by A-18 order. The

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applicant filed the present O.A. praying again to be included as a Technical staff in category-I by challenging Annexure A-18 rejection order. In other words, the main reliefs in O.A. 1125/99 and the present O.A. are the same.

8 Therefore, the challenge of the applicant in this O.A. against the order at Annexure A-9 on abolition of Auxiliary and Administrative (non-ministerial) category-reclassification of posts issued on 20th August, 1996 is hit by Res judicata as he had already agitated the very same issue before this Tribunal and High Court and attained finality.

9 The respondents have submitted that the applicant was appointed as Deckhand (Auxiliary) w.e.f. 13.10.94 based on the judgment of the Tribunal in O.A.69/92 and not on the recommendation of a regularly constituted DPC/Selection Committee. At that time, the post of Deckhand was available both in Technical as well as Auxiliary categories but he was appointed against a vacant post under Auxiliary category only. He has accepted the terms and conditions of service stipulated in the offer of appointment. More over, the applicant is a non-matric, there is no provision for granting him fitment to a higher scale of pay as per the existing rules.

10 As regards the averment of the applicant with respect to grant of higher scale of pay of Rs. 975-1540 to Deckhands in CIFE Bombay and CIFT Cochin, the respondents submitted them as misleading and denied.

11 The challenge against inclusion of Auxiliary category as Technical staff is hit by Limitation Act as Annexure A-9 on abolition of Auxiliary and Administrative (non-ministerial) category-reclassification of posts was issued on 20th August, 1996.

12 Another point raised by the applicant is that the impugned order at Annexure A-18 has been issued without following the direction of the

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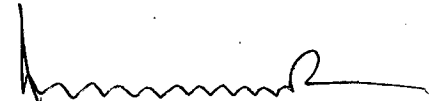
High Court in its judgment at Annexure A-17. Annexure A-18 shows that pursuant to the order of the High Court, the option submitted late by the applicant was treated as received in time and a speaking order issued to him detailing the reasons for rejecting his claim.

13 In the result, we are of the view that the applicant being a Deckhand appointed on the direction of the Tribunal without undergoing a selection process, on abolition of the Auxiliary category posts on reclassification having been categorised as Supporting Staff, can only be adjusted against a post having the same scale of pay. Even otherwise, he cannot be inducted into the Technical category as he has not passed Matriculation. Having challenged the rejection of his representation for induction in Technical category by filing O.A. 1125/99 before the Tribunal, he cannot raise the very same issue again.

13 In this view of the matter, we do not find any merit in the O.A. It is accordingly dismissed. No costs.

Dated 4th November, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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