

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.474/2003

.....MONDAY.....this the 27th day of March, 2006

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HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

- 1 P.S.Nobi, S/o Sukumaran,
Net Making Supervisor (T-I-3)
Central Institute of Fisheries Technology,
Matsyapuri (PO) Cochin.29
residing at Pampalamal, NAD,
Alwaye.
- 2 Tomy Rebello, S/o Xavier Rebello,
Boilderman (T-1-3)
Central Institute of Fisheries Technology
Matsyapuri (PO) Cochin.29
residing at Pallekat House,
Edacochin,Cochin.682006.Applicants

(By Advocate Mr. P.V.Mohanan)

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- 1 The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, Dr.Rajendra Prasad Road,
New Delhi.
- 2 The Director,
Central Institute of Fisheries Technology,
Matsyapuri PO,Cochin-682029.Respondents

(By Advocate Mr.P.Jacob Varghese)

The application having been heard on 1.3.2006, the Tribunal on 27.3.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER



The grievance of the Applicant No.1 is that even though he was entitled to be placed in the Grade T-II-3 from the date he was promoted to the T-I-3 Grade as per the modified Technical Service Rules (TSR for short), the respondents did not do so. The grievance of the 2nd applicant is that the earlier option exercised by him to continue with the TSR existed prior to the modification has not been cancelled by the respondents and did not permit him to exercise fresh option for accepting the modified Technical Service Rules in spite of his Annexure.A7 representation dated 23.9.2000 made in the wake of the Office Order dated 20.9.2000 placing similarly placed persons in T-I-3 grade in T-3 grade w.e.f 3.2.2000. Both the applicants have sought a declaration that they are entitled to exercise fresh options for the modified TSR with effect from 3.2.2000, i.e., the date from which Annexure A.4 notification regarding modification in the existing TSR was issued. The Applicants have also sought direction for setting aside the Annexure.A5 letter dated 6.2.2003 issued as clarification of the modified TSR so far as it denies re-option to the Applicants to the modified TSR and insisting for 10 years combined service in Grades T-II and T-III as on 3.2.2000 for placement from Grade T-I-3 to Grade T-II.

2 A brief background of the case is that the TSR issued by the Indian Council of Agriculture Research (ICAR for short) came into being on 1.10.1971. Since there were anomalies in the Rules, the

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respondents issued the Annexure.A4 notification dated 3.2.2000 carrying out certain changes. One of the changes brought about was in the matter of modification in the grade structure in the following manner:

"On account of two overlapping grades of T-I-3 and T-II-3 the assessment promotion has become redundant and therefore grade structure in Cat.I and II has been modified as hereunder:

Existing	Revised
<u>Category I</u>	
T-I Rs.3,2000-85-4,900	T-I Rs. 3,2000-85-4,900
T-2 Rs.4,000-100-6000	T-2 Rs.4,000-1000-6000
T-1-3 Rs.4,500-125-7000	
<u>Category II</u>	
T-II-3 Rs. 4,500-125-7000	T-3 Rs.4500-125-7000
T-4 Rs.5500-175-9000	T-4 5500-175-9000
T-5 Rs.6500-200-10500	T-5 Rs.6500-200-10500

Accordingly, the identical scales for Grade T-I-3 and Grade T-II-3 got merged to form T-3 Grade in the same scale of pay of Rs. 4500-7000. The said modification dated 3.2.2000 further stipulated as under

"As per the revised grade structure, the entrants of category I at T-1 grade would continue to be regulated for assessment from T-1 to T-2 after five years of service as is at present. However, from T-2 Grade such personnel possessing the qualifications as prescribed herein further under this order for Category-II for direct recruitment, would be eligible for assessment promotion to T-3 grade after five years of service, while those not possessing such qualifications shall become eligible for assessment promotion to T-3 grade only after 10 years of service in the T-2 grade. The assessment promotions from T-3 to T-4 and T-4 to T-5 shall continue to be regulated at five years interval as at present."

The above modification brought out in the grade structure of the

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TSR was to take immediate effect ie., 3.2.2000 and the existing technical employees were given an option to be exercised within one month ie., by 2.3.2000 to continue to be governed by the existing rules or come under the modified rules.

3 Before the aforesaid modifications in TSR, Grade T-II-3 was the entry grade in Category II which was filled up by direct recruitment and by promotion in the percentage of 66 2/3 and 33 1/3 respectively. According to the applicants, with the introduction of the aforesaid modifications, the Technical Personnel Grade T-1-3 who did not acquire the qualifications for direct recruitment in category I and who were in the pre-revised scale of Rs. 1400-2300 stood merged in T-3 grade category in Category II in the scale of pay of Rs. 4500-7000. Since the modified rules were silent about the determination of the equivalent qualification and the regularization of the service of technical personnel in T-I-3 grade in the category I, which stood eliminated from 3.2.2000, the applicants opted for the existing rules (pre-modified TSR). Some of the similarly persons did not make any options but sought to know the modalities of regularization of their service so that they can consider the exercise of option. The respondents, thereafter, vide Annexure.A10 Office Order dated 5.1.2002 considered the representations of those technical personnel in T-1-3 grade regarding regularization of their service in terms of the

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notification dated 3.2.2000 and clarified that the "Institute concerned are required to apply the equivalent qualifications wherever required as in the past but as per the duly notified/recognized qualifications by the competent authority in the matter of fixing "Eligibility Criteria for Category II under TSR" as the concept of equivalence has not been changed or redefined and the same is provided for in the revised model qualifications as prescribed vide notification dated 3.2.2000". They were also granted a fresh chance of 30 days ie., up to 5.2.2002 as a final measure to those technical personnel who had submitted their representations within the period stipulated in the notification dated 3.2.2000 and could not exercise their option in the absence of clarification sought by them.

4 The Applicant No.1 commenced service on 30.11.88 as Net Making Supervisor in T-II grade in CIFT. He was promoted to the T-I-3 grade with effect from 1.1.98. The applicant's claim is that he was eligible to be placed in Grade T-II-3 in Category II with effect from 1.1.98 itself in terms of the amendment made in TSR on 1.2.95 by which the category barrier to TSR was removed and personnel in Grade II with five years service and in the Grade T-1-3 in Category I in all functional groups were included in Grade T-II-3 in Category II under TSR. . Accordingly a large number of technical personnel in Grade T-II and T-I-3 in category I were placed in T-II-3 in Category II with effect from 1.1.95. The

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Respondent No.2 vide Annexure.A2 letter dated 11.6.02 recommended the applicant No.1 also for placement to the grade of T-II-3 of Category II and referred the matter to Respondent No.1. The Respondent No.2 in the said letter dated 11.6.02 has noted that the applicant No.1 possessed the following qualifications:

"1 SSLC
2 PDC
3 Mate Fishing Vessel Course Certificate issued by CIFNET (GOI)
(18 months)"

5 The applicant No.1 comes under the functional group "Field/Farm Technician" and the qualification prescribed for Category II posts under Field/Farm Group is as follows:

"(iii) *Three years Diploma/Bachelor's Degree in relevant filed.

**National Trade Certificate of ITI/National apprenticeship certificate or equivalent qualifications with seven years experience in the relevant field.

Or

**Matriculate with ten years experience in the relevant field.

Or

**One year's training course in Forestry with ten years experience in the relevant field.

Or

**Intermediate in Science/Intermediate in Agriculture.

(iv)3 years experience in the relevant field for Diploma Holders.

*In fields where the duration of Diploma courses available in the country is only two years, the minimum qualification will be two years Diploma instead of three years Diploma.

**Applicable to Council's employees in position as on 1.1.1977 for the purpose of promotions only against 33 1/3% vacancies reserved for departmental

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promotions."

The respondent No. 2 has further stated that the MFVC Certificate possessed by the applicant is a course having duration of 18 months conducted by the Central Institute of Fisheries Nautical Engineering & Training, Ministry of Agriculture, Government of India but not a Diploma and hence he does not possess the essential qualification prescribed for Category II. However, there is no Diploma course available in this field. The Respondent No.2 has, therefore, informed the Respondent No.1 that the certificate possessed by the applicant No.1 could be considered adequate qualification for his placement in Grade T-II-3 of Category II. It was for the Respondent No. 1 to consider the aforesaid recommendation of Respondent No.2 and to treat the certificate possessed by the applicant No.1 as adequate qualification for his placement to Grade T-II-3 of Category II. According to the applicant No.1, the qualifications insisted upon by the respondents for Category II for direct recruitment is Degree or Diploma in the relevant field. There is nothing mentioned about the qualification of competency certificate in the relevant filed. Only certificate course of competency are awarded for the post of Net Making Supervisor. So the posts such as Skipper, Engine Driver, Boat Crew etc., come under the Group III and post of Deckhand, Bosun etc. come under Group I and they are placed in Category II based on the qualification of

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certificates issued by the Mercantile Marine Department. The applicant also claims similar treatment.

6 As regards the second applicant is concerned, he commenced service on 18.12.1984 as Boilerman (Technician-I) and was promoted to Grade T-II with effect from 1.7.90 and thereafter to the next higher grade of T-I-3 with effect from 1.7.95. On further assessment he was granted three advance increments in the same grade of T-I-3 with effect from 1.7.2000. The post held by him is included in the functional Group III, namely, the "Workshop Technicians" under the TSR. He had also opted for the existing rules (pre-modified TSR). He seeks permission of re-option to the modified Technical Service Rules in view of the fact that the Respondents vide Annexure.A6 Office Order dated 20.9.2000 permitted similarly placed persons in Grade T-I-3 who have not opted to be governed by the pre-modified TSR were allowed to be governed as per the modified TSR and placed them in T-3 scale of Rs. 4500-7000 w.e.f. 3.2.2000.

7 The applicants have challenged the Annexure.A5 letter dated 6.2.03 which clarified that the service rendered in the Grade T-II-3 (now T-3 w.e.f 3.2.2000) alone be counted for the purpose of assessment benefit for the Grade T-4, that the T-2 personnel who had completed 5 years of service in Grade T-2 prior to 3.2.2000 are to be considered for merit

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promotion/advance increments in T-I-3 Grade of category I from the due date, that the technical personnel in grade T-2 and erstwhile T-I-3 who do not possess qualification prescribed for direct recruitment to Grade T-3 in category II will be placed in T-3 grade only on completion of 10 years of combined service in grade T-2 and T-I-3 as on 3.2.2000 or thereafter and that there is no benefit of re-option. .

8 The applicants have submitted that they are entitled to opt the service conditions favourable to them because when they submitted the option, none of the clarificatory orders were in existence. At the same time, vide Annexure.A6 Office order dated 20.9.2000, 23 personnel in the T-I-3 Grade who did not opt for the then existing TSR were declared to be governed by the modified TSR and thereby placed them in Grade T-3 in Category II and majority of them are below matriculates. The second applicant has, therefore, made Annexure.A7 representation dated 23.9.2000 and submitted that he exercised his option to continue in TSR existed prior to the modification because the modified TSR was vague in the matter of technical qualifications, induction in the respective grade, granting of advance increments etc,. Since the respondents themselves have issued the Office Order dated 20.9.2000 as referred to above, inducting 23 technical personnel holding the Grade T-I-3 to Grade T-3 with effect from 3.2.2000, and out of them most of

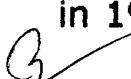
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them are non-metric the applicant has requested for cancellation of his earlier option and permit to exercise fresh option for accepting the modified TSR. However, he was not permitted to do so.

9 The applicants, have, therefore, filed the present OA seeking the following main reliefs:

- "(i) To declare that the first applicant is entitled to be placed to the grade T-II-3 from the date on which he was promoted to grade T-I-3 as per pre-modified technical service rules.
- (ii) To declare that the applicants are entitled to exercise fresh option of the modified technical service rule with effect from 3.2.2000.
- (iii) To call for the records leading to Annexure A5 dated 6.2.2003 and set aside the same in so far as it does not confer the right of re-option to the modified technical service and insisting 10 years combined service in Grade T-II and T-III for placement of technical personnel from Grade T-I-3 to T-II.

10 The respondents have opposed the contentions of the applicants. The first applicant joined the Respondent No.2 Institute as Technician-II (Net Making Supervisor) in the scale of Rs. 1200-2040 with effect from 30.11.88. As per the provisions of the TSR, on completion of five years in the grade the performance of the applicants were to be assessed. On assessment of his performance he was not found suitable for promotion to the next higher grade or for the grant of advance increments in the same grade. Similar assessments were made in 1994, 95 and 1996 also with the same result. However, when



he was assessed on 31.12.1997, he was promoted to the next higher scale of T-I-3 in the scale of Rs. 4500-7000 with effect from 1.1.98. His claim for placing him in the grade to T-II-3 with effect from 1.9.98 was not granted but the committee considered his case along with other fifteen cases and found that they were not qualified for placement in T-II-3 of Category II of TSR since the certificates possessed by them cannot be treated as equivalent of Diploma and the same was communicated to him also. The applicant has, therefore, opted to be governed by the pre-modified TSR for which the qualification for Categories I and II was prescribed as under:

"Field/Farm Technicians:

Essential qualifications:

CATEGORY I

i) Matriculate with atleast one year's certificate in relevant field.

or

Matriculate with 5 years experience of working in the respective field; or

*Matriculate with National Trade Certificate/National Apprenticeship Certificate or eq. with 3 years experience in the respective field.
or

*National Trade Certificate/ National Apprenticeship Certificate (if non-Matric) or eq. With 5 years experience of working in the respective field.

ii) *For the post of 'Cook' a candidate should be 'Literate' And should have proficiency in cooking.

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CATEGORY II

*Three years Diploma/ Bachelor's Degree in relevant field.

**National Trade Certificate of ITI National Apprenticeship Certificate or eqv. qns. with seven years experience in the relevant field; or

**Matriculate with ten years Experience in the relevant

field; or

**One Year's training course in Forestry with ten years experience in the relevant Field.; or

**Intermediate in Science/ Intermediate in Agriculture.

ii) 3 years experience in The relevant field for

diploma holders.

Desirable qualifications:

(i) Diploma in the relevant field.

**In fields where the duration of diploma courses available in the country is only two years, the minimum qualification will be two years diploma instead of three years diploma.*

***Applicable to Council employees in position as on 1.1.77 for purpose of promotions only against 33 1/3% vacancies reserved for departmental promotions."*

According to the respondents, the Annexure.A3 clarification order dated 6.2.2003 is not applicable for the applicants at all as the same was applicable only to those who have opted for the modified TSR issued vide Annexure.A4 notification dated 3.2.2000. The Applicants have opted for the pre-modified TSR and the option so exercised was irrevocable and have no right of re-option. They have also submitted that all personnel in T-I-3 are not to be adjusted in T-3 but only those who are opted for modified TSR only need to be adjusted on fulfilling the eligibility as mentioned in the clarification dated 6.2.2003. In the case of the applicant No.1, the Mate Fishing Vessel Course Certificate possessed by him is a course having the duration of 18 months conducted by the Central Institute of Fisheries, Nautical Engineering and Training and it is not a Diploma and hence he does not possess the required qualification prescribed for Category II. The Respondent No.1 had issued orders on 1.2.95 removing category barrier between Category I and II and the relevant extract of the said order is as under:

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T.2 and not possessing qualifications prescribed for entry to Category II by direct recruitment will be placed in Grade T-I-3 in the event of merit promotion through Five Yearly Assessment. Such employees in the event of improving their qualification and acquiring degree/diploma/any other qualification prescribed for entry in Category II by direct recruitment will in case of merit promotion, be placed in Grade T-II-3 from 1st January of the year following the year in which degree/diploma/certificate is awarded."

The respondents have also submitted that when competency certificates are awarded by the Mercantile Marine Department for the post of Skipper/Engine Driver etc. which have been approved for these posts, there is no such competency certificate issued by the Government organizations for the post of Net Making Supervisor.

11 As regards the applicant No.2, the respondents have submitted that he cannot be permitted to exercise re-option to the modified TSR as it was clearly mentioned that once an option is made it shall be final and irrevocable. They have also denied the contention of the applicants that by the amendment dated 1.2.95, the category barrier to TSR were removed and personnel in Grade T-II with 5 years service and Grade T-I-3 in Category I in all functional groups were included in Grade T-II-3 in Category I under the TSR. The removal of category barrier was conditional and only persons in T-I-3 grade possessing direct recruitment qualifications in Category II were placed in Category II and not all persons. As per clarification dated 6.2.2003 of the ICAR, the

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personnel in Grade T-I-3 who do not possess qualifications for direct recruitment to Grade T-III in Category II will be placed in T-III grade only on completion of 10 years combined service in Grade T-II and T-I-3 as on 3.2.2000 or thereafter. With regard to the 23 personnel in the grade T-I-3 mentioned by the applicants in A-6 Office Order dated 20.9.2000 on receipt of the Annexure.A5 clarification dated 6.2.2003, Annexure.R.4 order dated 7.4.03 was issued to the effect that the Technical persons who do not possess the qualification prescribed for direct recruitment to Grade T-3 in Category II were placed in T-3 Grade on completion of 10 years combined service in Grade T-II and T-I-3 as on 3.2.2000 and on subsequent dates.

12 In the rejoinder the applicants have reiterated their position that when the modified TSR was introduced vide Annexure.A.4 letter dated 3.2.2000 there was no explanation regarding equivalent qualification available. It was only vide Annexure.A9 letter dated 20.11.2001, the Respondent no.1 has issued a clarification regarding equivalent qualification. Admittedly the modified TSR was silent about regularization of the services of Technical Personnel in T-1-3 grade in category I though this grade stands eliminated with effect from 3.2.2000. Therefore the respondents gave fresh chance upto 5.2.2002 vide the Annexure A.10 letter dated 5.1.2002. Because of this uncertainty prevailing in this regard, many personnel in different Institutes

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of ICAR could not exercise their proper option to the modified TSR contained in proceedings dated 3.2.2000. After the clarification regarding equivalent qualification was issued on 5.1.2001 based on which the Technical personnel working in the Institutes of ICAR were given fresh chance to exercise option. Therefore, vide the Annexure.A11 order dated 29.7.2002, several Technical Personnel were given promotion in terms of the modified TSR. Similar order has been passed in respect of 7 Technical Personnel placing them in T-3 grade in the scale of Rs. 4500-7000 w.e.f. 3.2.2000. The applicants are also similarly placed and they are also entitled to be treated in the same manner by placing them in T-II-3 (renamed as T-3).

13 We have heard Shri P.V. Mohanan, for the applicant and Shri P.Jacob Varghese for the respondents. The only question for consideration in our view is whether the applicants have a right now to exercise option to come over to the modified TSR as the clarificatory orders were issued much later and applicants were not informed of the nature of the implementation of the TSR since the post of T-I-3 and T-II-3 stands merged to Grade T-3 irrespective of the qualification. It is an admitted fact that the grade structure in Category-I and II has been modified in the existing Technical Service Rules of ICAR only with effect from 3.2.2000. The existing Technical Personnel, who may like to be governed only as per the existing TSR were directed to exercise

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their individual option by 3.2.2000. Some of them including the applicants have opted to be governed by the pre-modified TSR. But certain others represented to the respondents to enlighten them the modalities applicable with regard to regularization of their service in the grade, so that they may exercise their option. There was valid reason for seeking such clarification because the modified TSR was totally silent about regularization of the service of Technical Personnel in T-I-3 grade in Category-2 though this grade stood eliminated w.e.f 3.2.2000. The respondents have admitted in the Annexure A.10 Office Order dated 5.1.02 that representations so received could not be disposed of within time for want of clarification from the Council. The respondents have, therefore, granted one more opportunity as a final measure but restricting the same to only those Technical Personnel in Category I, who had submitted representation within the period stipulated vide endorsement to notification dated 3.2.2000 and could not exercise individual option in the absence of clarification sought for by them. In the same Office Order dated 5.1.2002, the Respondents have also clarified that the Institute concerned are required to apply the equivalent qualifications wherever required as in the past but as per the duly notified/recognized qualifications by the competent Authority in the matter of fixing "Eligibility criteria for Category II under TSR" as the concept of equivalence has not been changed

or redefined and the same is provided for in the revised model qualifications as prescribed vide notification dated 3.2.2000. It is, therefore, evident that the Annexure.A4 letter dated 3.2.2000 introducing the modification has not attained finality till 5.1.2002. Now in such circumstances, is there any relevance for restricting the exercise of option only to those who made representations within the stipulated period of one month in terms of notification dated 3.2.2000 and have not opted for the modified TSR in the absence of clarification sought by them. In our considered view such a restriction is not valid as the Applicants have opted for the pre-revised TSR only under the bonafide belief that such a course would be advantageous to them. It is only with the clarification given in the letter dated 5.1.2002, it has become clear to them that the modified TSR would only beneficial to them. Further the stand of the Respondents that the option once exercised by the applicants and similarly placed persons are irrevocable and final cannot be accepted inasmuch as the respondents themselves have enhanced the period upto 5.2.2002 for exercising the option when the stipulation in the notification dated 3.2.2000 to all the Technical Personnel was to exercise their option within thirty days. Then the very purpose of exercising the option in situations which involve pay fixation is to be appreciated in the right perspective. The purpose is definitely intended that the existing employees shall not be put to any disadvantage due to

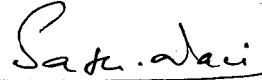
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the switch over to the modified rules. The administrative convenience of the respondent department comes only next. In this view of the matter we hold that such restrictive permission to exercise the option is illegal and discriminatory. We, therefore, hold that in view of the clarification now issued in terms of letter dated 5.1.2002, the option exercised by the Applicants and similarly situated persons cannot be treated as irrevocable and final. The other questions regarding the entitlement of the applicant No.1 to be placed in the T-II-3 grade from the date he was promoted to T-I-3 grade and insistence of the respondents for 10 years combined service in Grade T-II and T-III for placement of the applicants from T-I-3 grade to T-II grade has to be decided by the respondents once the applicants are permitted to opt for the modified TSR with effect from 3.2.2000.

14 We, therefore, declare that both the applicants are entitled to exercise fresh option to the modified TSR with effect from 3.2.2000. Thereafter, the Respondents shall consider their entitlement to be placed in the appropriate grade and grant them the same benefits which have been derived by the similarly placed Technical Personnel on having exercised option in terms of the letter dated 5.1.2002. We also direct the respondents to pass appropriate orders in respect of both the applicants within a period of three months from the date of receipt of a copy of this order. There will be no order as to costs.

Dated this the 27th day of March, 2006


GEORGE PARACKEN
 JUDICIAL MEMBER


SATHI NAIR
 VICE CHAIRMAN