

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 479 of 2010

Tuesday, this the 03rd day of April, 2012

CORAM:

Hon'ble Mr. Justice P.R Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

G. Gopakumar, aged 41 years,
T-II-3 (Carpenter), Central Institute of
Fisheries Technology, Willington Island,
Island, Cochin-29, residing at : CIFT Residential
Complex, 2/14, Perumanoor, Kochi-15.

..... **Applicant**

(By Advocate – Mr. Poly Mathai)

V e r s u s

1. Director General, Indian Council for
Agricultural Research, Krishi Bhavan,
Dr. Rajendraprasad Road, New Delhi-112 001.
2. The Director, Central Institute of Fisheries
Technology, Matsyapuri PO,
Cochin-29.

..... **Respondents**

(By Advocate – Mr. Varghese & Jacob)

This application having been heard on 21.03.2012, the Tribunal on
03-04-12 day delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

The applicant in this Original Application is working as a Carpenter in T-II(3) grade under the 2nd respondent. He was promoted by Annexure A2 order with effect from 29.6.2006 based on a letter from ICAR (Annexure A3) which held that the higher certificate for promotion to T-II(3) grade should be from a public agency or institution for a period of one year.



Subsequently, the respondents reviewed the promotion granted to the applicant on the ground that the higher certificate mentioned in the recruitment rules has a duration of more than one year. Accordingly, the respondents cancelled the promotion granted to the applicant and ordered refund of the excess salary drawn by him vide Annexure A1 order. Aggrieved he has filed this Original Application for the following reliefs:-

- "a. Quash Annexure A1 order dated 3.5.2010,
- b. Declare that the applicant is entitled for promotion to the grade T-II(3) under the 2nd respondent as given in Annexure A2,
- c. Issue any other order or direction as deemed just, fit and necessary in the facts and circumstances of the case."

2. The applicant submitted that he was promoted to the grade of T-II(3) with effect from 29.6.2006 by Annexure A2 order based on a decision by ICAR dated 19.12.2008 (Annexure A3). He had completed a course of one year from National Council for Vocational Training in the trade of Carpentry. The trade of Carpentry has only a one year course. The promotion to the grade of T-II(3) involves no change of duty or a higher position in the inter se seniority. It is only a grade promotion. The mechanical application of the rules in comparison with the certificates issued to such trades like refrigeration, electrician etc. by the respondents is arbitrary. Out of all the five persons promoted along with the applicant, only the applicant has been reverted and ordered to refund the excess salary. This is discriminatory. Vide Annexure A5 it is clear that there is no course under the NCVT in carpentry which is more than one year. Therefore, the applicant's certificate is also liable to be treated as higher certificate as in



the case of Shri C. Rajendran and Shri Jose Kalathil.


3. The 2nd respondent in his reply statement submitted that the applicant had exercised his option for continuing under the pre-modified (old) TSR and therefore, his service conditions for the period after 3.2.2000 would be governed by the provisions of old TSR. The applicant while submitting his representation for promotion had deliberately suppressed the fact that duration of the NTC certificate in Carpentry possessed by him is only of one year which does not qualify for higher certificate prescribed under the rules. Due to oversight and clerical error on the part of the office of the 2nd respondent this fact could not be detected while processing the representation of five technical employees including the applicant. After serving due show cause to the applicant and after considering the representation so received, the respondents found that there was no other alternative except to rectify the mistake by cancelling the promotion order of the applicant. As held by the Apex Court in SCC (L&S) 547 on 13.12.2007 - Union of India & Anr. Vs. Narendra Singh, mistakes are mistakes and they can always be corrected by following the due process of law and the submission of the affected person on the contrary cannot be countenanced that mistakes cannot be corrected. If there is no training in the trade of Carpenter which is more than one year the applicant cannot claim the benefit of promotion on this account as there is no provision existing under the pre-modified TSR to grant promotion to such employees in the grade T-II(3) category who are possessing only one year certificate course. Shri C. Rajendran and Shri Jose Kalathil working under 2nd respondent



although have undergone one year diploma course in the trade of refrigeration and mechanic during 1975-76, their certificate was treated to be equivalent to two years diploma course as certified by the competent authority. This decision was based on the ground that there was no two year diploma in refrigeration and mechanic course during the period when both the technical personnel obtained the one year course certificate and the course contents of one year certificate at that time, i.e. 1975-76 was the same for two years diploma now being awarded by the NTC.

4. We have heard the learned counsel for the applicant Mr. Poly Mathai, learned counsel for the respondents Mr. Varghese & Jacob and perused the records.


5. The respondents' claimed that the placement benefit given to the applicant vide Annexure A2 order was erroneous for the reason that the trade certificate he held is not a higher certificate as per the council's letter F.No.7(27)/79-Per.III, dated 28.3.1981 which states that "since one year's trade certificate has been prescribed as an essential qualification, any trade certificate for which the duration prescribed for the course is more than one year, may be treated as a higher certificate." This is only a clarification of the rule and not the rule itself. Taking the clarification as it is, a higher certificate will have a course content with duration of at least one year and one day in the context of desirable qualification for category-I in the year 1981. The higher certificate is not defined in the recruitment rules. The clarification in the year 1981 is only an interpretation or an opinion. It



cannot be mechanically relied upon .

6. The contention that the applicant had suppressed the information that he had only one year course certificate is untenable. He did not misrepresent at all. He only submitted the certificate he had, for promotion. If the respondents have erred in scrutinizing his case papers, the applicant cannot be held responsible for the same. Even if an error was detected the respondents should have carefully considered the case of the applicant for promotion with due application of mind.

7. The applicant had pointed out two specific instances wherein one year course certificate was declared equivalent to two year course certificate for the purpose of promotion. Shri C. Rajendran and Shri Jose Kalathil working in the 2nd respondent office are not having higher certificate of more than one year duration. The contention of the respondents is that there was no two year diploma course in refrigeration and mechanic course during the period 1975-76 when they got the one year course certificate and that the course content of one year at that time was same for the two years diploma now awarded by NTC. If one year course is extended as two years course without any increase in the content of the syllabus it does not make any sense in distinguishing the one year course from two years course. The respondents mechanically stressed to two years and not the course content. It is sheer wastage of time, if a one year course is made two years course in the above fashion. The applicant holds a one year course certificate in the Carpenter trade which was awarded in the year 1986-87. The applicant



contends that there is no course in the carpentry available in that trade for more than one year. The respondents have not responded to this contention. The applicant's certificate should also have been treated as a higher certificate for the fact that there is no course in the country with more than one year in the carpentry trade. Such one year courses have been accepted by the respondents in similar circumstances as equivalent to two year courses. It is plain discrimination and arbitrariness when similarly placed persons are not treated similarly.

8. It is for the respondents to take note of the course that are being offered in the country while formulating the recruitment rules. It is also for the respondents to be in touch with the academic institutions so that they offer courses which are relevant to the requirement of the trade. The applicant cannot be made a victim of unrealistic recruitment rules, arbitrariness and discrimination. It is within the power of the respondents to relax rules to remove hardship in the application of recruitment rules.

9. Further, we have examined the option form submitted by the applicant for exercising fresh option for old TSR produced at Annexure R2. It states that applicant has read the council's circular No. 19-10/2004-EIV, dated 12.10.2006 and that he opts to be governed by the old technical service rules. This option form is not dated. It could be submitted on any day after 12.10.006. The omission of date could be intentional or inadvertent. If the option letter is submitted after the stipulated date it is inoperative. Lacking the crucial aspect of date of option, the option letter can be treated as null



and void.

10. In the above circumstances in the interest of justice, we allow the OA as under:-

The impugned order at Annexure A1 dated 3.5.2010 is set aside. The interim order of stay dated 7.6.2010 on recovery is made absolute. The respondents are directed to consider treating the one year course of the applicant in Carpentry trade as higher certificate for the purpose of the promotion to T-II(3) category as is done for two other employees similarly placed as the applicant. Appropriate orders in this regard should be issued within a period of three months from the date of receipt of a copy of this order.

11. No order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE P.R RAMAN)
JUDICIAL MEMBER

“SA”