

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 482

1991

DATE OF DECISION 12.2.1992

K. Sivasankaran & E.V.Kurian Applicant (s)

Mr. C. P. Ravindranath Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary to Govt., Department of Industries
New Delhi and others

Mr. George Joseph, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? NO
3. Whether their Lordships wish to see the fair copy of the Judgement? NO
4. To be circulated to all Benches of the Tribunal? NO

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The grievance of the two applicants is mainly against Annexure-B order passed by the Director, Small Industries Service Institute, Trichur, the third respondent regarding appointment to selection grades in Group C & D posts.

The applicants are Skilled workers Grade-II working in the Govt. of India Extension Centre, Shoranur. When the applicants and similarly situated persons were stagnating in the same scale, the association representing the employees took up the matter with the Govt. for an opening of

further promotional avenue. Accordingly, the Department created 32 posts of selection grade in the Skilled Worker Grade-II category. The applicants including others were appointed in the newly created post as per Annexure-A order dated 7.2.84. But to the surprise of the applicants, the third respondent by the impugned proceedings dated 19.3.84 rescinded Annexure A. Though the applicants did not challenge, the association of the employees filed O.P. 2277 of 83 and O.P. 2948 of 84 before the High Court of Kerala. They were transferred to this Tribunal and disposed as per Annexure-C judgment dated 31.7.89 after re-numbering them as TAK 241/87 and 379/87. The operative portion of the judgment reads as follows:

"5. In the facts and circumstances we allow the two petitions to the extent of setting aside the impugned order dated 23.11.82 at Ext. P-4 in the first petition and directing the respondents to consider the representation of the petitioners dated 20th March, 1979 in depth and pass necessary orders on:

- a) increasing the number of Selection Grade posts and
- b) the revision of the pay scale of Rs.260-400 of Skilled workers Category-IIIB

We also direct that as regards operation of the impugned order dated 19.3.84 at Ext. P-2 in the second petition in so far as it concerns the petitioners thereof, status quo as of today be maintained till a final decision on the representation dated 20.3.79 is taken. The decision on the representation should be taken by the respondents within a period of four months from the date of communication of this order. ."

2. After the judgment, the respondents rejected the contention raised in the representation filed by the association representing the applicant. However, those persons who were granted selection grade and whose case status quo has been ordered continued to be in the

selection grade till the date they enjoyed the benefit of selection grade. But the applicants however, were not granted selection grade in spite of repeated representations. Annexures-D and E are the representations submitted by the applicants. In that representations, they have pointed out the anomaly in the pay scale. According to the applicants, while selection grade was given to all employees as per Annexure-A and the denial of the same to the applicants alone is arbitrary and also discriminatory. The applicants are entitled to protection of Article 14 and 16 of the Constitution of India.

3. The respondents in the reply statement virtually admitted the facts but contended that based on the Annexure R-4 letter of the Development Commissioner, Small Scale Industries dated 21.10.82, 34 posts of selection grade w.e.f. 1.8.1982 were sanctioned. The relevant portion of the letter is extracted below:

"	Name of the Institute	Designation & No. of posts converted into existence for more than 3 years as on 1.8.82	No. of posts converted into selection for grade w.e.f. 1.8.82	No. of posts converted into selection for grade w.e.f. 1.8.76
		review of Selection Grade posts		

Group 'C' posts

X	X	X	X
In an under SISI Trichur including in and under office of the Director Production Centre, Ethumanur	Skilled Worker Gr.II (Cat. B)	171	34

X X X X

According to the aforesaid order, the selection grade were sanctioned after review by the Director, SISI, Trichur as per order No. A. 32012/2/83-E dated 7.2.84. Consequent to Annexure R-5, Annexure-A dated 7.2.84 was passed appointing 33 skilled workers (grade-II, category-B) including the applicants as skilled workers in the selection grade. But when ~~XXX~~ communication Annexure-B from the Development Commissioner, Small Scale Industries, New Delhi was received, it was understood that there was no additional post of skilled grade-II as converted for SISI, Trichur including the Directorate of Production Centre, Ettumanur. Therefore, Annexure-A order dated 7.2.84 by which skilled workers were appointed to selection grade was cancelled and withdrawn as per the impugned order Annexure-B dated 19.3.84 (Annexure R-6). They have further submitted that Government [✓] the Central/Production Centre Employees Union of Ettumanur approached the High Court of Kerala and obtained a stay order dated 19.3.84 and got the benefit of continuing in the selection grade so far as skilled workers affected by the cancellation in that Unit. This stay was continued till the passing of the final order. When the final order was passed by the Tribunal in the aforesaid cases, the affected persons' case for promotion to higher grade was maintained because of the continuance of the status quo order. The benefit of the stay order is available only to the employees who have obtained stay order. So far as the applicants are concerned, it is submitted by the

respondents that they were also given ~~xxxxx~~ selection grade by order dated 7.2.84 but they were brought back to the ordinary grade by order dated 19.3.84. The IV Pay Commission abolished selection grades and skilled workers grade-II, category-B and the selection grade and the ordinary grade were put in the scale of pay of Rs. 950-1500. Since the applicants have not obtained stay, they are not entitled to any benefits to in this application.

4. The learned counsel Shri C. P. Ravindranath, appearing for the applicants submitted that out of the 33 officials who are promoted to the selection grade as per Annexure-A order, only the applicants and three others were denied the benefit of selection grade on account of the impugned order Annexure-B. This is discriminatory and violative of the provisions of Article 14 and 16. He also contended relying on the decision in 1990 (5) SLR 752 (State of W. Bengal Vs. Ashok Kumar Chakraborty) that the applicants had ~~somexx~~ accrued right on the earlier basis of the ~~4~~ policy statement of the Government/cannot be taken away by any change of policy at a later stage by Annexure-B order.

5. Admittedly, the applicants have not approached the Court against Annexure-B cancellation order passed as early as on 19.3.84. It is true that they were included in Annexure-A order of the Director, Trichur appointing 33 skilled workers to the Selection Grade post/was passed. Immediately when the cancellation, as stated in the reply affidavit filed by the respondents, was issued, the Central Government Production

Centre Employees' Union of Ettumanur approached the High Court and obtained a stay of the cancellation order dated 19.3.84 only so far as the employees of that unit. The applicants were working at Shornur. They have not produced any material to satisfy us that they were also represented before [✓] the High Court in the case filed challenging the cancellation order so as to get the benefit of status quo order for them also. A clear statement by the respondents in this behalf in para 7 and 8 of the reply affidavit have not been denied by the applicants in the rejoinder except stating that the applicants along with 33 others were promoted to selection grade and it is only in the case of the applicants and three others that the benefit of selection grade had been denied and that the applicants have been representing the matter several times before the respondents. So long as the applicants were not represented or were parties in the proceedings which was pending before the High Court, they cannot claim the benefit of status quo order passed in that case.

6. It appears from Annexure-C judgment of the Tribunal that the operation of the impugned order Annexure-B, which was Ext. P-2 in the case filed before the High Court, was and [✓] challenged/ the court granted status quo to be maintained till the final decision on the representation submitted by the applicants therein on 20.3.84. The applicants have no case that they were ~~xxxxxx~~ parties in the representation directed to be disposed of by the Tribunal as per Annexure-² judgment.

7. The decision relied on by the applicants may not strictly apply to the facts of this case. The order by which the applicants were promoted was passed by way of rectifying some mistakes regarding the calculation of additional posts of skilled workers as indicated in para 6 of the reply affidavit. If the Government is passing an order rectifying a mistake, it may not come within the purview of policy matters and change thereof.

8. However, in this case, the cancellation order has been challenged before the High Court by persons working in the Ettumanur Centre. The applicants who were working at Shornur did not choose to approach the High Court/Tribunal for getting the same order which was obtained by the similar employees working in a different unit. But they have now come before this Tribunal challenging the orders including the order Annexure-B dated 19.3.84, with an application for condonation of delay which we had allowed on 17.4.91 while admitting the application.

9. In the light of the judgment Annexure-C and the statement of the applicants that others similarly placed persons were already promoted to the selection grade, we feel that justice would be met in this case if we dispose of the application with directions. Accordingly, we direct the applicants to file a detailed joint representation before the second respondent with all the details about their grievances within two weeks from the date of

receipt of the copy of the judgment. If the same is received by the second respondent, he shall dispose of the same in accordance with law.

10. The application is therefore disposed of as above.

There will be no order as to costs.

N. Dharmadan
16.2.92

(N. DHARMADAN)
JUDICIAL MEMBER

N. V. Krishnan
16.2.92

(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

kmn

CPC 40/93 m
on 4.8.1991

SPM JWD

47

Mr C. P. Ravindranath
Mr George Joseph Aclise

Learned Counsel for respondents seeks
some time to file reply on the CPC. He may
do so ^{within two weeks} with a copy to learned Counsel for
petitioner. List for further directions on

23.3.93. ✓

(AN)
2/3

SR
(SPM)
2/3.

23.3.93 (10) Mr. Ravindranath th. proxy
Mr. George Joseph th. proxy

At the request of the learned counsel for
the respondents, list for further directions on 13.4.93.

Adv. by notice (15/3)

AN ND

SR
SPM

23.3.93

(34) Mr CP Ravindranath
Mr George Joseph

Post for further directions on 29.4.93.

PL

RR

ND

15.4.93

- 2 -

29.6.93 proxy counsel for petitioner
(26) Mr. George Joseph

Since the Learned Counsel
for the petitioner is out of Station,
left for further directions on

8.6.93

(CRR)

29.6.93

M
(AVHT)

10
29/4

8.6.93 Mr. CP Ravindranath
Mr. George Joseph, BCGSC

(13)

There is no merit in the Petition. Petition
dismissed.

C. Sankaran Nair (J)
V.C.

R. Rangarajan
AM

Ans
10/6/93
Marked