

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 502 of 1999

Friday, this the 3rd day of August, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. T.A. Sajeev, S/o Antony,
Thaissyerry House, Malipuram
Presently working as Chief Engineer
Grade-II, Integrated Fisheries Project,
Ernakulam.Applicant

[By Advocate Mr. K.S. Madhusoodanan]

Versus

1. Union of India, rep. by Secretary,
Ministry of Agriculture, Department of
Animal Husbandary & Dairying,
Krishi Bhavan, New Delhi.
2. Director General of Fishery Survey of India,
Botawala Chambers, Sir P.M. Road,
Mumbai-1Respondents

[By Advocate Ms. I. Sheela Devi, ACGSC]

The application having been heard on 3-8-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to call for records relating to A1 to A5, A7 and A8 and to direct the respondents to set right the anomaly in fixing the scale of pay under FR 35 while he was holding the post of Chief Engineer Gr.I on adhoc basis with effect from 8-5-87 to 4-11-97.

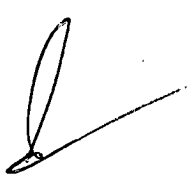
2. The applicant was holding the post of Chief Engineer Grade I on adhoc promotion from 8-5-1987 to 4-11-1997. During that period he was not granted the increments due. He is qualified to hold the post of Chief Engineer Grade-I. He was also appointed on stop gap adhoc officiating arrangement as

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Chief Engineer Grade-I in the pre-revised scale of Rs.1100-1600 from 5-5-1986 to 26-6-1986. He was also promoted on adhoc basis as Chief Engineer Grade-I during the period from 3-11-1986 to 28-11-1986. His fixation of pay under FR 35 is against the OM dated 22-10-1990 (A2). After returning from deputation his pay was fixed granting him one increment at the rate of Rs.100/-, as per A4. In pursuance of the directions of this Bench of the Tribunal, A7 order has been issued. He preferred a representation against A7 order on 4-12-1998. There is no response to the same. Denial of annual increments in the Chief Engineer Grade-II from 8-5-87 to 4-11-97 is against the spirit of FR 35 as well as A2. Since he is qualified to hold the post of Chief Engineer Grade-I with effect from 8-5-1987, he is entitled to get the fixation with increment in Chief Engineer Grade-I.

3. Respondents resist the OA contending that the OA is barred by limitation. FR 35 is not to be invoked where a Government servant holding the post in a substantive or temporary or officiating capacity is promoted or appointed in substantive or temporary or officiating capacity as the case may be, subject to the fulfilment of eligibility conditions as prescribed in the relevant recruitment rules to another post carrying duties and responsibilities of greater importance. The applicant has not fulfilled the eligibility condition of 7 years regular service in the post of Chief Engineer Grade-II and thereby his pay in the officiating post of Chief Engineer Grade-I has been fixed under FR 35 as per orders in force. The averment that the fixation of his salary under FR 35 is against the OM dated 22-10-98 is baseless.

4. With regard to the plea of limitation raised by the respondents, it is interesting noting that the respondents say

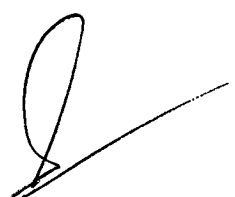


that the applicant filed on an earlier occasion OA No. 1343/98 and the same was not within the period of limitation prescribed and therefore this OA is barred by limitation. A6 is the copy of the order in OA No. 1343/98. From A6 it is clearly seen that an agreed order was passed there. The plea of limitation raised by the respondents is to be only rejected.

5. A7 is dated 19th of November, 1998. It is in response to the representation submitted by the applicant dated 13-4-1998. There it is stated that the applicant does not fulfil the eligibility condition of seven years regular service in the post of Chief Engineer Grade-II on the date of his appointment, i.e. 8-5-1987, to the post of Chief Engineer Grade-I on adhoc basis and therefore, it is not possible to consider his request to refix his pay and his representation is therefore rejected.

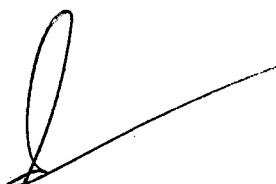
6. At the very outset, it is to be mentioned that if the second relief is granted, it will be actually setting aside A7. There is no relief sought by the applicant to set aside A7. When A7 is not sought to be set aside, it is only to be taken that the applicant is accepting the same and when he is accepting the same, he is not entitled to the second relief sought in the OA.

7. The learned counsel appearing for the applicant vehemently argued relying on the third paragraph of A2 that the applicant is entitled to the scale of pay of Chief Engineer Grade-I with effect from the date of his adhoc appointment on promotion. Paragraph 3 of A2 reads thus:



"The effect of this order is that restrictions under FR.35 are not to be invoked where a Govt. servant holding the post in substantive or temporary or officiating capacity is promoted or appointed in substantive or temporary or officiating capacity as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance."

8. The admitted case of the applicant is that he was given an adhoc promotion. It is borne out by A1 also. In order to come within the purview of paragraph 3 of A2, the promotion or appointment should be in a substantive or temporary or officiating capacity. Going by the pleadings of the applicant it can never be said that he was promoted in a substantive or temporary or officiating capacity. It is not only as per para 3 of A2 that one should have been promoted or appointed in a substantive or temporary or officiating capacity, but he should also fulfil the eligibility conditions prescribed under the relevant recruitment rules. Respondents have produced the relevant recruitment rules. R1(a) is the same. From R1(a) it is seen that for promotion to the post of Chief Engineer Grade-I from the post of Chief Engineer Grade-II, one should have seven years' regular service. The learned counsel for the applicant argued that the applicant has got the qualification. The question to be looked into is whether he fulfils the eligibility conditions or not. Going by the applicant's own case, it is clear that he had not put in seven years' regular service at the relevant point of time. That being so, both the conditions stipulated in paragraph 3 of A2 are not satisfied by the applicant. In that situation, the argument advanced by the learned counsel for the applicant based on paragraph 3 of A2 that the applicant is entitled to have the pay fixed as contained in A2, cannot be accepted.



9. A4 is an office order dated 20-6-1997. As per the same, the applicant's pay was fixed in the scale of Rs.3000-100-3500-125-4500 with effect from 15-1-1994 confining the monetary benefits with effect from 13-5-1994 onwards. There is no attack against A4.

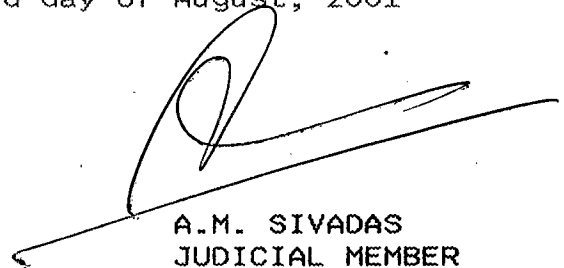
10. Since the entire argument advanced is based on A2 and A2 if to be applied those conditions are to be satisfied and those conditions are not satisfied and as A7 and A4 are not under challenge, the applicant is not entitled to any of the reliefs sought for.

11. Accordingly, the Original Application is dismissed. No costs.

Friday, this the 3rd day of August, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A1 True copy of the Order dated 18-6-87 promoting the applicant on adhoc basis as C.E.Gr-I with effect from 8-5-87 passed by the Director FSI.
2. A2 Photocopy of the O.M.No.1/10/89/Estt. dated 22-10-90
3. A3 Photocopy of the relevant portion of the Order No. F.3-1/90-Estt. dated 17-3-90 of the Zonal Director, FSI, Madras
4. A4 Photocopy of the Office Order No. F.2-40/96 Estt. dated 20-6-97 of the Zonal Director, FSI, Goa
5. A5 Photocopy of the Office Note No. F.1-4/94 Estt. dated 26-9-94
6. A6 True copy of the Order in OA No. 1343/98 dated 16-9-98 of this Tribunal.

- 7. A7 True copy of the Order No. F.8-16/98.E.1 dated 19-11-98 issued by the 2nd respondent.
- 8. A8 True copy of the representation dated 4-12-98 submitted by the applicant before the 1st respondent.
- 9. R1(a) True copy of the Recruitment Rule issued by the Ministry of Agriculture dated 9-9-1986