

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 503/91
T. A. No. ~~109~~

DATE OF DECISION 29.6.92

K.P. Remesan

Applicant (s)

Mr. George Cherian

Advocate for the Applicant (s)

Versus

Director, Integrated

Respondent (s)

Fisheries Project & another

Krs. K.B. Subhagamani, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.S. Habeeb Mohamed, Administrative Member

The Hon'ble Mr. N.Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ^{Yes}
2. To be referred to the Reporter or not? ^{Yes}
3. Whether their Lordships wish to see the fair copy of the Judgement? ^{Yes}
4. To be circulated to all Benches of the Tribunal? ^{Yes}

JUDGEMENT

Habeeb Mohamed, AM


The grievance of the applicant is that his pay which was fixed at Rs 855/- under FR 22C with effect from 6.9.88 in the post of Iceman is now sought to be reduced and fixed at Rs 825/- with effect from 6.9.88 and Rs 840/- with effect from 1.9.89 and Rs 855/- with effect from 1.9.90 by the impugned Annexure-A5 order dated 19.11.90 of the second respondent, the Accounts Officer, Integrated Fisheries Project.

2. The facts are not in dispute. The applicant was working on the post of Knalasi under the second respondent, but he claims that he was being utilised as Iceman from 1.9.84, When a

vacancy of Iceman arose for selection, the applicant also applied on 29.7.88 (Ann.R1) and he was selected. Even earlier, he was working as an Iceman on ad hoc basis and he has exhibited Annexure-A2 which relates to the fixation of his pay as Iceman from 14.1.88. At that time, he was drawing Rs 810/- in the post of Khalasi in the scale of Rs 750-940 and when he was posted as Iceman in the scale of Rs 825-1200, which is said to be a promotion post carrying duties and responsibilities of a higher nature, his pay was fixed at Rs 825 under FR 22C. Likewise, on his regular appointment after selection, his pay from 6.9.88 was fixed at Rs 855 under FR 22C vide Annexure-A3 statement dated 23.9.88.

3. The learned counsel for the applicant contends that since he has been appointed to a post carrying greater responsibilities by promotion, fixation under FR 22C was absolutely correct and did not require any interference.

4. The respondents have filed a reply stating that the post of Iceman was to be filled up by direct recruitment only and as it is not a case of promotion, FR 22C will not apply. The respondents produced before us Ann.R3 which is the Integrated Fisheries Project Class IV Recruitment Rules, 1973. The schedule to these rules contain provisions of recruitment to various categories of posts of which the post of Iceman is also one at Sl.No.11. It is made clear in Column 10 of the schedule



that, that post is to be filled up by direct recruitment. The applicant's appointment to the post of Iceman as a direct recruit was made accepting his request. It is not a promotion as contended by the applicant. It is true that Ann.A3 pay fixation statement was issued, but the said fixation was done due to oversight and later it was noticed that the substantive pay of the applicant in the post of Iceman is to be regulated and fixed under FR 22(a)(i) and (b) and not as per the provisions of FR 22C. Ann.A5 order is issued strictly in accordance with law rectifying the mistake committed by the Government earlier due to oversight.

5. The learned counsel for the applicant submitted that even if the case of the respondent is accepted, a careful perusal of FR 22C would show that the benefit of that rule has to be given not only when an official is promoted from a lower post to a higher post carrying higher responsibilities, but also when there is an appointment, otherwise than by way of promotion.

6. We have heard the ^{learned} counsel on both sides and perused the records. In the light of the pleadings, we have to consider only two provisions, ie. the provisions of sub clause (a)(i) of FR 22 and FR 22C. They are reproduced below:

"FR 22. The initial substantive pay of a Government servant who is appointed substantively to a post

on a time-scale of pay is regulated as follows:-

- (a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended--
 - (i) when appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of Rule 30) than those attaching to such permanent post, he will draw as initial pay the stage of the time scale next above his substantive pay in respect of the old post."

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"22C. Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued:"

7. Sub clause (a)(i) of FR 22 provides that initial substantive pay of a government servant, when appointed to a new post involving assumption of higher responsibilities and duties, will be fixed in the time scale of the higher post next above his substantive pay in respect of the old post. But FR 22C is more liberal and has a wide application and has to be given effect to notwithstanding the other FRs including FR 22A, because of the nonobstante clause. It appears that FR 22C covers the cases covered by clause (a) (i) of FR 22 as well.

8. The appointment of the applicant to the post of Iceman was on 6.9.88. In the light of the view expressed by us above there is nothing wrong in accepting the case of the applicant that he is entitled to the benefit of

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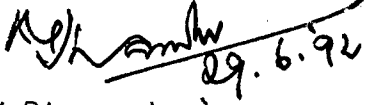
fixation under FR 22C and that the fixation of his pay under Ann.A2 and A3 had been done correctly and that there is no mistake warranting a rectification as contended by the respondents.

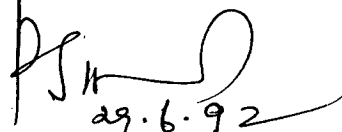
8. We are satisfied that FR 22C applies not only when a government servant is promoted to a higher post but also to a case where a Government servant is appointed to a higher post as in the present case. FR 22C has been substituted by clause (1)(a)(1) of the amended FR 22 which was notified and brought into force from 28th November 1990.

9. We are, therefore, satisfied that the applicant is entitled to have the pay fixed as Iceman in the scale Rs 825-1200 under FR 22C as this post is admittedly carrying higher responsibilities and duties and such fixation cannot be denied merely on the ground that the recruitment rules state that this will be by direct recruitment.

10. In the circumstances, we allow this application and quash the Ann.A5 and A7 orders and declare that the applicant's pay has been correctly fixed by the Ann.A3 statement with effect from 6.9.88 and he is entitled to all consequential benefits.

11. There will be no order as to costs.


(N. Dharmadan)
Judicial Member


(P.S. Habeeb Mohamed)
Member (Administrative)