

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 507 of 2012

Thursday, this the 4th day of June, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mr. R. Ramanujam, Administrative Member

O. Ramachandran, aged 48, S/o. Raman Nair,
Skilled Support Staff (Milkman cum Mazdoor)
Central Plantation Crops Research Institute, Kasaragod, Post Kudlu,
Residing Madiaki, via Nileswaram. / **Applicant**

(By Advocate – Mr. P.V. Mohanan)

V e r s u s

1. The Director General, Indian Council of Agriculture Research,
Krishi Bhavan, New Delhi 110 001.
2. The Director, Central Plantation Crops Research Institute,
Kasaragod – 671 124.
3. V. Lakshmi Narayana, Skilled Support Staff, Central Plantation Crops
Research Institute, Regional Station, Vittal,
Karnataka State – 574 243. **Respondents**

[By Advocate – Mr. P. Santhosh Kumar (R1&2)]

This application having been heard on 29.05.2015, the Tribunal on

04.06.2015 delivered the following:

ORDER

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

The applicant has approached this Tribunal complaining of the action of the respondents 1 & 2 in denying the applicant promotion to the post of LD Clerk in preference to the 3rd respondent and also for the consequential reliefs.




2. The case of the applicant can be summarised as follows:-

2.1. The applicant commenced his service as a Supporting Staff Grade-I on 18.5.1989. Thereafter he was posted as Skilled Support Staff. The 3rd respondent obtained qualification of SSLC and pre-university course and he commenced service as Supporting Staff on 19.3.1994. He is far junior to the applicant in the grade of Skilled Support Staff, even as per the final seniority list of Skilled Support Staff published on 23.5.2012. As per the said list the applicant is arrayed as rank No. 5 whereas the 3rd respondent figures as serial No. 21. Central Civil Service (Revised Pay) Rules, 2008 which came into effect from 1.1.2006 was extended to employees of Indian Council for Agricultural Research (in short ICAR). The applicant and other Skilled Support Staff, after re-training were placed in the pay band PB-1 with Grade Pay of Rs. 1,800/-. The post of LD Clerk is included in the administrative category as envisaged under clause 21 of the bylaw of ICAR. The revised Recruitment Rules of LDC was published on 19.3.2009 (vide Annexure A2). It was further revised as per Annexure A3 notification, as per which, 5% of vacancies were directed to be filled on seniority-cum-fitness basis from Group-C employees who have three years of regular service in the post with Grade Pay of Rs. 1800/-. Hence, the applicant contends that he is entitled to be considered for promotion under clause 9(ii) of Recruitment Rule as against 5% quota stated above. The qualification of XIIth class pass is not required for promotion in the 5% quota set apart for Skilled Support Staff. Since other persons, 1-4 did not come up for

consideration and since the applicant was the next person being the 5th in the list, he should have been given promotion as LDC, the applicant contends.

3. The respondents 1 & 2 have filed reply statement stating as follows:-

3.1. It is admitted that the applicant joined the ICAR at CPCRI, Kasaragod by direct recruitment as Group-D Supporting Staff Grade-I Milkman Mazdoor on 18.5.1989. His basic qualification at the time of joining the post was only VIth standard. He later possessed the Xth standard equivalency certificate during August, 2011. The designation of Group-D Supporting Staff were later changed as Skilled Support Staff and they were placed under Group-C after imparting proper training to the non-matric staff in Pay Band-I of Rs. 5,200-20,200/- plus Grade Pay of Rs. 1,800/- with effect from 1.1.2006. As per the revised Recruitment Rules persons to be promoted under the 5% quota are required to qualify in a typing test to the extent mentioned therein within a period of one year from the date of their appointment as LDC failing which no annual increment shall be allowed until he possesses the typing test. In 2011 one vacancy of LDC fell vacant under 5% promotion quota. The DPC held on 29.5.2012 after careful consideration recommended the name of the 3rd respondent Skilled Support Staff for promotion to the post of LDC. It was accepted by the competent authority and order was issued to the 3rd respondent who later joined in the promoted post on 18.6.2012. The 3rd respondent possessed the qualification of SSLC, PUC and Typing Test (English). All Skilled Support Staff (SSS)



were placed in the Pay Band of Rs. 5,200-20,200/- plus Grade Pay of Rs. 1,800/- with effect from 1.1.2006. As per the revised Recruitment Rules the basic educational qualification for the post of LDC had been enhanced to XIIth class from the pre-existing Xth class. As per the seniority list the 1st person qualified for promotion to the post of LDC was Shri P. Ambu but DPC found that he was unfit for promotion to the post of LDC. The 2nd person qualified for the post was Shri Laxminarayan (serial No. 21). Hence his case was recommended by the committee.

4. The point for consideration is whether for getting promotion to the 5% quota as per the rules, should the employee possess the educational qualification equivalent to PUC/XIIth class as contended by the respondents.

5. Heard the learned counsel for the applicant Mr. P.V. Mohanan and learned counsel for the respondents Nos. 1 & 2 Mr. P. Santhosh Kumar.

6. It is not disputed that the applicant belonged to Group-C in the pay band of Rs. 5,200-20,200/- with Grade Pay of Rs. 1,800/-. According to the respondents for filling up of that 5% quota the employees should possess the minimum basic qualification required for the post of LDC. The Rule says that the person so promoted should be required to qualify the typing test ~~to the extent of~~ failing which no annual increment will be allowed. The requirement of typing test to be acquired within a period of one year from the date of appointment as LDC, is not very much relevant ^{here.} Annexure A2 is

the revised Recruitment Rules for the post of LDC. Column 6 deals with the educational and other qualifications required for direct recruitment. Annexure A2 is the revised Recruitment Rules for the post of LDC issued on 19.3.2009. Column 6 therein prescribes the educational and other qualifications required for direct recruitment which are extracted below:-

- “(i) Matriculation or its equivalent
- (ii) Proficiency in typewriting at a minimum speed of 30 w.p.m in English or 25 w.p.m. in Hindi.”

7. Column 9 prescribes the method of recruitment; whether by direct recruitment or by promotion or by deputation/absorption and percentage of vacancies to be filled by various modes. 50% of the posts were reserved for direct recruitment. 30% of the posts were to be filled up through limited departmental competitive examination. Clause (b)(ii) deals with 20% of the posts which were to be filled up on the basis of seniority subject to rejection of unfit among those (Skilled Support Staff) who are in the Pay Band of Rs. 5,200-20,200/- with Grade Pay of Rs. 1,800/-. There, it is specifically mentioned that the persons are to be “educationally qualified for appointment as Lower Division Clerk i.e. who have passed the Matriculation or an equivalent examination of a recognized Board or University.....” It is thereafter the revised Recruitment Rules were modified and issued on 8.6.2011.

8. The learned counsel for the applicant would submit that though in Annexure A2 as against the relevant column for filling up 20% by way of promotion on the basis of the seniority the requirement of educational qualification was specifically mentioned, such a clause is conspicuously

absent in clause (iii) noted in column No. 9. The column No. 6 is the clause where educational and other qualifications for direct recruitment are mentioned. There XIIth class or equivalent from a recognized board or university were specifically noted. Column 7 states as to whether age and educational qualification required for direct recruitees will apply in cases of promotees. The answer is "Yes; to the extent indicated in Col. 9". If it ended with the word "yes", there would be no difficulty at all to hold that XIIth class or equivalent qualification from recognized board or university was a must. But the rider "to the extent indicated in Col. 9" would make it amply clear that clause (iii) in column 9 regarding 5% quota to be filled on seniority-cum-fitness from Group-C, need not have the educational qualification mentioned as against column No. 6. What is required as against 5% quota is that they should satisfy the seniority cum fitness; it should be from Group-C and they should have three years regular service in the grade with Grade Pay of Rs. 1,800/-. The other rider that persons so promoted would be required to qualify in a typing test within a period of one year is not relevant at present because it is to be acquired within a period of one year from the date of their appointment as LDC. Had it been the intention that Group-C employees should also have acquired or got the minimum educational qualification of plus-II or equivalent then the rider "to the extent indicated in column 9 would not have been mentioned at all. Not only that as against 9(ii) which provides 10% vacancy to be filled up from among Group-C staff in the Grade Pay of Rs. 1,800/- it is specified that the employee should possess XIIth class pass or qualification equivalent. It


would leave no doubt that so far as 5% quota on the basis of seniority from among Group-C, it does not require educational qualification of XIIth class pass or equivalent qualification as an essential requirement. As such the view taken by the respondents that for promotion to the 5% quota from among Group-C, employees should have possessed educational qualification of XIIth class pass or equivalent cannot be sustained. As such the exclusion of the applicant on the ground that he did not have the educational qualification i.e. XIIth class is only to be set aside.

9. But there is one more aspect which also requires consideration. It is important to note that as per the final seniority list of Skilled Support Staff published on 23.5.2012 the applicant is ranked 5th. It is stated that Shri P. Ambu who is ranked first was not fit for promotion. Regarding Shri K. Baby the person ranked 3rd it is simply stated that she is not interested. The 3rd respondent herein is shown as against serial No. 21 (rank No. 21) and he was granted promotion on the ground that he had acquired pre-university course. Since for promotion to the 5% quota XIIth class or equivalent is not necessary the order passed by the respondents excluding the applicant and granting promotion to the 3rd respondent cannot be justified. It is also pertinent to note that as per Annexure R2 seniority list names of so many other employees of Group-C are also shown; the name of the applicant is shown as serial No. 102 (rank No. 102) whereas the rank of the 3rd respondent is shown as 150. Learned counsel for the applicant submits that other persons shown in the list are not Skilled Support Staff but that also

cannot be sustained since designation as against most of the persons are shown as Skilled Support Staff. Whether they had minimum educational qualification of Xth class or equivalent also may not be germane for consideration if the filling up of 5% quota of Annexure A3 is considered in the background as mentioned above. The reason for exclusion of other persons is not seen stated nor could it be properly elucidated by the respondents. Therefore, it is a case where Annexure A4 order dated 4.6.2012 is to be set aside for a fresh consideration of the whole issue.

10. The 3rd respondent though was served notice did not enter appearance. It is a fact that pursuant to Annexure A4 order R3 has been working as LD clerk and so the financial benefits accrued pursuant to Annexure A4 till this date shall not be ordered to be recovered from R3 since there was no fault on his part in getting promotion to the post of LDC. The respondents 1 and 2 have to consider the promotion of the applicant and other similarly placed Group-C employees with three years regular service in posts carrying a Grade Pay of Rs. 1,800/-, strictly in accordance with the terms of clause 9(iii) of Annexure A3 taking note of the fact that XIIth class pass or equivalent is not mandatory or necessary for granting promotion to the post of LD Clerk. The respondents will re-consider the whole issue afresh in terms of what have been mentioned above.

11. Original Application is allowed as above. No order as to costs.


(R. RAMANUJAM)
ADMINISTRATIVE MEMBER
"SA"


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER