

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

Thursday this, the 5th day of June, 1997.

CORAM: O.A.No.542/1996

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

P.J.Joseph,
Junior Fisheries Scientist,
Fishery Survey of India,
Kochangadi,
Cochin-5.

..Applicant

(By Advocate Mr.M.R.Rajendran Nair)

vs.

1. The Union Public Service Commission,
represented by its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110011.

2. Union of India represented by Secretary
to Government, Ministry of Food Processing, Industries,
Panchasheek Bhavan,
New Delhi. ..Respondents

(By Advocate Mr.M.A.Shekif for SCGSC)

The Application having been heard on 5.6.97, the Tribunal on
the same day delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant is working as Junior Fisheries Scientist in the Fishery Survey of India. The higher post of Fisheries Scientist is a Group-A post and as per the Recruitment Rules of the year 1987, the method of recruitment was 'direct recruitment' and the upper age limit was 35 years, relaxable by 5 years in the case of Government servants. On 27.10.1990 the first respondent issued a notification inviting applications for appointment to two posts of Fisheries Scientist. The age limit was to be reckoned as on 15.11.1990. The applicant who was eligible and qualified and was also within the age limit also applied pursuant to the notification. Unfortunately, the Bombay Bench of the Central

Administrative Tribunal in O.A. No.97/91 filed by a departmental candidate, directed considering amendment of the Recruitment Rules to provide promotional avenue to departmental candidates and also stayed the recruitment process already initiated. As a consequence of this order, the first respondent issued a corrigendum on 27.6.1992 notifying the cancellation of the recruitment process issued on 27.10.1990. The Recruitment Rules were amended and the fresh Recruitment Rules was notified on 4.9.1992 making 20% of the posts to be filled by promotion, failing which by transfer on deputation and 80% by direct recruitment. Thereafter on 14.5.1994 the first respondent issued a notification calling for applications for appointment by direct recruitment to 4 posts of Fisheries Scientists. The educational qualifications and age limit were the same as in the Recruitment Rules of the year 1987. The eligibility was to be reckoned as on the last date for receipt of applications, namely 2.6.1994. No relaxation for those who had applied pursuant to the notification dated 27.10.1990 was stipulated. The applicant having had crossed the upper age limit of 40 years on 2.6.94 submitted his application as also a representation on 28.5.1994 to the first respondent requesting for relaxation in the matter of upper age limit as he was while submitting his application pursuant to the notification dated 27.10.1990 well within the age limit. While so, the applicant filed O.A.No.771/94 praying for enhancement of promotion quota in the post of Fisheries Scientist from 20% as prescribed in the Recruitment Rules to 50% of the number of vacancies and also that the upper age limit should be reckoned with reference to the date mentioned in the original notification dated 27.10.90. By an interim order dated 3.6.1994, the Tribunal directed that the application submitted by the applicant should be received by

the first respondent and the request for relaxation of age also will be considered. On 4.6.94, the applicant made a representation to the Zonal Director, Fisheries Survey of India requesting him to forward his representation dated 28.5.1994 addressed to the Secretary, Ministry of Food Processing Industries, New Delhi. The O.A. No.771/94 was finally disposed of by order dated 20.3.1995 permitting the applicant to make a fresh representation to the first respondent within 15 days setting out his case in detail and with a direction to the first respondent that if such a representation is made, the same would be considered and disposed of within 4 months from the date of receipt. On the basis of his application submitted to the U.P.S.C., the applicant was by memo dated 19.3.1996 directed to be present for interview in the office of the first respondent in New Delhi on 24.4.1996 at 9.15 A.M. Though the applicant presented himself at the venue he was not permitted to appear in the interview on the ground that the applicant had crossed the age limit on the crucial date. Under these circumstances, the applicant has filed this application for the following reliefs:

- "i) Declare that applicant is entitled to be considered for selection and appointment as Fisheries Scientist on the basis of his applications submitted pursuant to Annexure A1 and the application submitted on 28.5.1994 and direct the 1st respondent to subject the applicant to interview for appointment as Fisheries Scientist and declare the results before appointments are made pursuant to the interview held in April 1996 by the 1st respondent.
- ii) Direct the 2nd respondent to consider the question of relaxation of age limit in the case of applicant for appointment as Fisheries Scientist

and direct that no appointments as Fisheries Scientist shall be made through direct recruitment until the applicant is considered for appointment as Fisheries Scientist.

iii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant, and

iv) Grant the cost of this Original Application. "

2. By an interim order dated 10.5.96, the respondents were directed not to finalise the proceedings pursuant to the interview held on 24.4.1996.

3. The respondents have filed a reply raising the following contentions. The interim order passed by the Tribunal in O.A.No.771/94 had no validity after the passing of the final order by the Tribunal vide its judgment dated 20.3.95. According to the directions contained in the final order in that case, the second respondent in this case was to consider and dispose of the representation which would be submitted by the applicant within 15 days from the date of the order. The representation submitted by the applicant pursuant to the above order was concerning enhancement of promotion quota in the post of Fisheries Scientist to 50% from 20% and this representation was considered and disposed of by the second respondent, stating that any amendment to the Recruitment Rules as suggested in the representation was not considered desirable. The recruitment process initiated pursuant to the notification dated 27.10.90 having been cancelled by notification dated 27.6.1992, the application of the applicant submitted in response to that notification had no relevance. When the applicant applied pursuant to the notification dated 14.5.94 he had crossed the upper age limit of 40 years as on the crucial date, namely, 2.6.94. The applicant, therefore, being overaged was not entitled to be

considered for selection and the action of the respondents in not considering his case is fully justified. Under these circumstances, the applicant is not entitled to the relief prayed for by him.

4. We have perused the pleadings and the documents on record and heard the learned counsel for both the parties. The contention of the respondents that the interim order in O.A.771/94 passed on 3.6.94 has no relevance in view of the final order passed by the Tribunal in that case is unexceptionable. According to the final order in O.A.No.771/94, the second respondent was bound to consider the representation submitted by the applicant pursuant to that judgment. The representation related only to amendment of the Recruitment Rules and enhancement in the promotion quota from 20% to 50% and it did not contain any request for reckoning the age limit as on 15.11.1990 or for relaxation of upper age limit. Therefore, the respondents are right in rejecting the candidature of the applicant who had crossed the upper age limit as on 2.6.94.

5. Learned counsel of the applicant with considerable vehemance argued that as the applicant was within the age limit when he applied for direct recruitment pursuant to the notification dated 27.10.90, the respondent should have reckoned his eligibility as on 15.11.90 and not 2.6.94. The cancellation of the notification dated 27.10.90 having been made by virtue of the order of the Bombay Bench of the Central Administrative Tribunal in O.A. No.97/91, the right of the applicant for being considered for the post notified on 27.10.90 should not be adversely affected, argued the learned counsel.

6. Though this argument at the first blush may appear to have some force, on a closer scrutiny we find that it has no merit. The applicant who had applied pursuant to the notification dated 27.10.90 could have moved for a review of

the order in O.A.No.97/91 of the Bombay Bench of the Central Administrative Tribunal. He did not do so. Further the U.P.S.C. had issued a notification dated 27.6.92 cancelling the recruitment process initiated by the notification dated 27.10.90. If the applicant was aggrieved by the cancellation of the notification and the dropping of the recruitment process, he should have taken appropriate action against the cancellation of the recruitment process. This also was not done by the applicant. In O.A. No.771/94 though the applicant had prayed for a direction that upper age limit in his case should be reckoned from 15.11.90 , the Tribunal did not grant him any such relief. The applicant was only allowed to make a representation and in the representation submitted by him pursuant to the above order, he had requested only for enhancement of the promotion quota and did not make any request for relaxation of the upper age limit or for reckoning his age as on 15.11.90. Therefore, though the entire episode was really unfortunate, the applicant has no legal right to get the relief, as prayed for by him.

7. In the result, finding no merit in this application, the application is dismissed, leaving the parties to bear their own costs.

Dated the 5th June, 1997.

P. V. Venkatakrishnan
P. V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

A. V. Haridasan
A. V. HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURE

Annexure A1: True copy of the extract of the
notification dated 27.10.1990
issued by the Union Public Service
Commission.

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