

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A. No. 542/89 199  
X X X X X

DATE OF DECISION 31.7.1990

Central Institute of Fisheries  
Technology Employees' Federation  
C/o CIFT, Matsyapuri P.O., Cochin  
rep. by Secy. M.K.Kuttykrishnan Nair & Another  
Applicant (s)

Mr. PV Mohanan Advocate for the Applicant (s)

Versus

The Director General, ICAR, Respondent (s)  
Krishi Bhavan, New Delhi & 3 others.

Mr. PVM Nambiar, (for R1&2) Advocate for the Respondent (s)  
M/s Chandrasekharan & Chandrasekharan Menon (for R3)

CORAM:

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V. Haridasan - Judicial Member

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

JUDGEMENT

(Mr. A.V. Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant has challenged the order of the second respondent, Director, Central Institute of Fisheries Technology, dated 14.8.1989 No.4/28/87-Admn. Vol. II, absorbing the 4th respondent as the Driver w.e.f. 11.8.1989, the another order dated 14.8.1989 of the second respondent whereby the applicant is informed that he is not suitable for appointment to the post of Driver and also the circular notification issued on 30th August, 1989 proposing to fill up the post of Driver by direct recruitment and has prayed that, these orders may be quashed.

The facts of the case can be briefly stated as follows:

2. The first applicant is the Secretary, of the Central Institute of Fisheries Technology/Federation, and the second applicant is an employee in the Central Institute of Fisheries Technology working as supporting staff Grade I and a member of the first applicant's union. The 2nd applicant who served the Indian Army as N.C.O Driver for 21 years retired from the Defence service in the year 1976 while serving as a Class I Driver. He got reappointed in the CIFT as supporting staff Grade I in the year 1978. In the year 1980 he was selected by a Departmental Promotion Committee to the post of Driver and was appointed as a Driver at the research centre of the CIFT at Bombay. He worked there as a Driver for nine months. In 1981 he requested for a transfer to Cochin on compassionate grounds. As a post of Driver was not vacant at Cochin, the second applicant sought reversion to the post of supporting staff Grade I and got posted as supporting staff Grade I at Cochin in June, 1981. He was hoping as for a posting/Driver, on the occurrence of a vacancy, On 31.8.1982 by the retirement of one Shri P.Natarajan a vacancy of Driver reserved for Ex-service men arose. The applicant applied for the post and he was selected in the selection held in December, 1982. He was posted as a Driver on honorarium basis from 10.12.1982 onwards. By successive departmental orders he had been continuously

working as a Driver on honorarium basis. The applicants made representation for regularisation of the second applicants' service as a Driver, since he was selected by a duly constituted Departmental Promotion Committee. But a post of Driver was advertised in the Indian Express dated 10.6.1984 stipulating the qualification of middle school standard pass with valid heavy duty driving licence. This post should have been the post reserved for ex-servicemen. Since the selection held in 1982 for the post reserved for ex-service men and was not filled up. The applicant along with many others including the third respondent participated in the selection process in which the third respondent who did not possess the requisite qualification at the time of notification was selected and appointed. The applicant filed O.P. before the Hon'ble High Court of Kerala challenging his non-selection and the selection of the third respondent on the ground that the selection of the third respondent was invalid since he did not possess the requisite qualification on the relevant date and also that he has been unduly favoured by the second respondent who was the Chairman of the Departmental Promotion Committee, since the third respondent is the son of the driver of the second respondent. The OP was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985 and this Tribunal has set aside the selection of the third respondent and directed the respondents

1 and 2 to review the case of the applicant by a review DPC, along with other candidates on the basis of the qualification possessed by the candidates as on 15.6.1984 and that the post held by the respondent No.3 to be filled up on the basis of the selection made by the review DPC, It was however observed that, as the third respondent was working as a Driver on the basis of the selection which was set aside, he would be allowed to continue till the newly selected Driver takes charge, and that the respondents 1 and 2 <sup>would be</sup> at liberty to consider him for absorption in any other available post in accordance with law. But contrary to the directions of the Tribunal and against the Recruitment Rules, the second respondent vide order dated 14.8.1989 <sup>has</sup> absorbed the third respondent as Driver w.e.f. 11.8.1984 and by another order dated 14.8.1989 it was held that the applicant is unsuitable for the post of Driver. These two orders are the impugned orders Annexure- III and IV respectively. The review DPC was not validly constituted. The 4th respondent, against whom a CBI case is pending and who is not an expert either in automobile engineering or vehicle driving was absolutely incompetent to be a member of the DPC. The second respondent ~~who was not~~ soon after the judgement of the Tribunal in TA K- 685/87 setting aside the earlier selection of the third respondent had declared openly that he would <sup>not</sup> ~~not~~ select the second applicant as Driver so long as he is in the office of the Director, CIFT. He should not have acted as the Chairman

of the Departmental Promotion Committee. The Departmental Promotion Committee has not properly reviewed the case of the applicant as directed by the Tribunal in the judgement in TA K-685/87. As per the Recruitment Rules for the post of Driver after 1986, absorption of the third respondent is impossible. The impugned order at Annexure-III absorbing the third respondent as the Driver in another post is therefore unsustainable, since according to the Recruitment Rules recruitment to the post of Driver is to be made through Employment Exchange only in case no suitable person among the supporting staff is available. The respondents 1 and 2 have issued Annexure-VII circular dated 30.8.1989 proposing to fill up the post of Driver in which it was stated that candidates will be considered along with those sponsored by the Employment Exchange, Hence, Annexure-VII circular is also against the Recruitment Rules. Therefore, the applicant prays that the Annexure-III, IV and VII may be set aside and respondents 1 and 2 may be directed to appoint the second applicant in the post of driver on the basis of his merit and qualification.

3. The application is opposed by the respondents.

Respondents 1 and 2 have filed the reply statement and the third respondent has filed a separate reply statement.

The impugned order Annexure-III, absorbing the third respondent in another vacancy is justified by the respondents on the ground that this was done in conformity with the directions of the Tribunal in TA K-685/87. The impugned

order at Annexure-IV intimating the applicant that he was not found suitable to be appointed as driver is sought to be justified on the ground that the Departmental Promotion Committee was properly constituted and that the Departmental Promotion Committee has considered the case of the applicant in the light of the directions contained in the order in TA K-685/87. It has been stated in the reply statement of the respondents 1 and 2 that in view of the interim order dated 16.10.1989 in this application, application from departmental candidates have been called for afresh. The allegation made in the application against the competency of the 4th respondent to act as a member of the Departmental Promotion Committee has been refuted. It has also been stated that the allegation against the second respondent is also baseless. The respondents submit that the applicant has no legitimate grievance, and pray that the application may be dismissed.

4. We have heard the arguments of the learned counsel on either side and have also gone through the documents produced. The learned counsel for the respondents made available to us the proceedings of the review Departmental Promotion Committee basing on which the impugned order at Annexure-IV stating that the applicant was unsuitable for appointment as Driver was issued.

5. The applicants have challenged the impugned order at Annexure-IV on the ground that the Departmental Promotion

Committee <sup>which</sup> reviewed the case of the second applicant as directed by the Tribunal in the judgement in TA K-685/87 was not properly constituted, and that the review undertaken by it is not proper. There is an allegation that the 4th respondent is neither an expert in Automobile Engineering nor in Motor Driving, and that he being a person against whom a CBI case is pending was incompetent to act as a member of the Departmental Promotion Committee. Though the respondents 1 and 2 have in their reply statement stated that the allegations against the respondent No.4 is not correct, the 4th respondent has not filed any reply statement. <sup>in allegation</sup> That there is a CBI case is pending against the 4th respondent is also not specifically denied. The second respondent is the Director of the CIFT, Cochin. The third respondent whose selection as driver by the Departmental Promotion Committee of which the second respondent was Chairman was set aside by this Tribunal in the order in TA K-685/87 on the ground that he was selected by the Departmental Promotion Committee ignoring the fact that on the last date of filing the application namely 16.8.1984, he did not have a driving licence for heavy duty vehicles, <sup>the</sup> <sup>(licence)</sup> ~~which~~ <sup>to</sup> ~~the~~ possession of which was an essential qualification for applying <sup>the</sup> post of driver. This Bench has observed in the order in TA K-685/87 as follows:

"So far as the merits of the case are concerned the respondents have not denied that at the time of the advertisement in June, 1984 and on the last date of filling of application on 15.6.1984 respondent no.3 did not have a driving licence

for heavy duty vehicle. The respondents no.1&2 in the counter affidavit instead of denying the allegation of the petitioner that respondent no.3 did not have heavy duty vehicle driving licence cryptically stated that in his application dated 10.6.1984, respondent no.3 had indicated that he was "holding motor driving licence" The respondent no.3 also in his counter affidavit has not specifically denied the aforesaid allegation of the petitioner. The learned counsel for the respondents also did not produce any documentary evidence to show that in June, 1984, respondents no.3 had a valid driving licence for heavy duty vehicles. It has also not been denied by the respondents that respondents no.3 was the son of the driver of Director, C.I.F.T. It has also been revealed that the selection Committee was presided over by the Director of the C.I.F.T. Accordingly the allegation that respondent no.3 was specially accommodated in the selection process cannot be brushed aside easily."

In the face of the above observation in the order of the Tribunal and also in view of the allegation in the application that the second respondent had declared that he would not select the applicant as driver, the second respondent should have graciously kept away from the review Departmental Promotion Committee which met for reviewing the case of the applicant in obedience to the directions from the Tribunal in TA K-685/87. But going through the proceedings of the review Departmental Promotion Committee/ DSC held on 10.8.1989, we find that the second respondent himself has functioned as the Chairman of the Committee. The proceedings of the review DPC has been made available for our perusal by the learned Central Govt. Standing Counsel appearing for the respondents. The proceedings

below the names of members who constituted the committee  
reads as follows:

"The members perused the note presented to it by the Member Secretary as well as the records of the selection made in the selection committee meeting held on 29.12.1984. The members also perused the original judgement as well as subsequent orders of the CAT in TA No.K-695/87. The merit list prepared in 1984 contained 3 names only as follows:

- 1) Shri G.Jyothikumar
- 2) Shri N.P.Daniel
- 3) Shri Jhoney George

The applicant namely Shri OK Xavier was not even placed in the merit list by the selection committee which met on 29.12.1984. The review DPC/DSC also weighed the relative merit of the candidates with reference to the qualifications, marks secured etc. and found that Shri OK Xavier does not become eligible for appointment to the post of Driver which is to be vacated by Shri G.Jyothikumar, as per the directives of the CAT. The committee, hence, recommends that Shri O.K.Xavier is not meritorious enough to be considered for the above post."

It is obvious from the proceedings that the review DPC has only adopted the assessment made by the selection committee which met on 29.12.1984. It was, finding that the selection committee which met on 29.12.1984 has not made a proper comparative assessment of merit that the selection was set aside and a review DPC was ordered to be constituted for the purpose of assessing the comparative merit of the applicant ~~vis-a-vis~~ the other participants in the selection. This has not been done as is evident from the proceedings of the review DPC. The tabulation sheet in which marks were awarded to the different participants in the selection ~~xxxxx~~ ~~xxxxx~~ ~~xxxxx~~ ~~xxxxx~~ ~~xxxxx~~

committee meeting dated 29.12.1984 has also been made available along with the proceedings of the review DPC. There were four members including the Chairman in the committee. They ~~were~~ were 1) Shri M.R.Nair, Chairman 2) Shri K Balachandra Menon, Member 3) Shri M.K.Kandoran, Member and 4) Dr.P.N.Kaul, Member Secretary. There are three sheets, the first sheet contains the names of four persons, their qualifications and marks awarded to them. In this sheet four members have signed. But in the other two sheets the signature of one member namely, Shri M.K.Kandoran is missing. It is in the third sheet where the signature of Shri M.K.Kandoran is missing, that the name of the applicant occurs. The tabulated sheet showing the marks awarded to each of the participants should have been signed by all the members of the selection committee. Since the pages 2 and 3 do not contain signature of one member, it cannot be accepted to be an assessment made by the entire committee. Further, against the name of the applicant it has been stated, civil certificate not produced and "does not fulfil the essential qualification". The applicant admittedly was selected as a Driver in the CIFT at ~~Bombay and had actually worked for about an year there.~~ as driver It was for the purpose of getting a posting to Cochin, that he got himself reverted as supporting staff in the year 1981. It is again an undisputed fact that he was selected for appointment as a Driver in the year 1982, and that he could not be regularly appointed as a driver since a post was

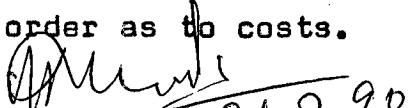
transferred from here. It is further come out from the pleadings that eversince in 1982 the applicant was being utilised as a Driver on honorarium basis. It is a fact undisputed that the applicant had served for 21 years as a Driver in the Army, and that at the time of retirement from the Army, he was a Class I Driver. It is seen in the tabulation sheets of the DPC/DSC dated 29.12.1984 that the applicant was given only 30 marks out of 75 in practical test and 10 marks out of 25 in the interview, while the third respondent who had hardly 3 years experience as driver had been given 50 marks in practical test and 20 marks in interview and Shri Jhoney George whose name figured in the select list at No.3 who had only one year experience as apprentice in the Cochin Port Trust had been awarded 40 marks at the practical test and 10 marks in the interview. We are not at all satisfied with the objectivity of the marks awarded at the DPC/DSC held on 29.12.1984. Further as stated earlier, the tabulation sheet in which the name of the applicants figured has not signed by all the members of the DPC. So the review DPC has not made a proper assessment of the merits of the applicant. Further as the applicant had served as a driver in the Army as well as in the CIFT for about quarter century and since he had worked in a Metropolitan city like Bombay in the CIFT itself, and especially when he had been selected for appointment in

the year 1982, we are of the view that to ~~send~~ <sup>beyond</sup> him as ~~a~~ unsuitable for drivers' post is wholly unjustified. We are convinced that no useful purpose would be served by again directing the respondents 1 and 2 to review the case of the applicant. Further, on the basis of his past service as driver for 21 years in the Army and for about 4 years in the CIFT, we are of the view that we are justified in holding that the applicant is suitable to be appointed as a Driver rejecting the opinion of the review DPC which has reviewed the case of the applicant in a perfunctory manner. Hence, we are of the view that the applicant is entitled to be appointed in the post vacated by the third respondent.

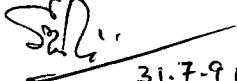
5. The applicant has prayed that the absorption of the third respondent in another vacancy as is ordered in the impugned order, Annexure-III is against the Recruitment Rules of the year 1986. The respondents have justified the absorption on the ground that in the order in TA K-685/87 this Tribunal has observed that the respondents 1 and 2 would be at liberty to consider the third respondent for absorption in any other available post in accordance with law. The arguments advanced from the side of the respondents that the third respondent was absorbed in compliance with this direction is not fully correct. In the order in TA K-685/87 what was observed was that the respondents 1 and 2 would be at liberty to consider the third respondent for absorption in any available post in accordance with law.

It was never stated that he should be absorbed in violation of the Recruitment Rules. As per Recruitment Rules of the year 1986, recruitment from outside will be made only after considering those who work as supporting staff. But the learned counsel for the respondents submitted that, since the applicant could have no grievance if he is accommodated in the post vacated by the third respondent as this Tribunal itself has in TA K-685/87 given liberty to the respondents 1 and 2 to absorb the third respondent in an available vacancy, the appointment of the third respondent need not be interfered with. Considering the fact that the applicants' grievance would be met by ordering his appointment in the post vacated by the third respondent and the further fact that the third respondent has been working as a Driver, in the light of the observation made in TA K-685/87, we feel that it is not necessary to set aside the appointment of the third respondent made by Annexure-III order.

7. For the reasons mentioned in the foregoing paragraphs, we set aside the impugned order at Annexure-IV dated 14.4.1989 of the second respondent informing the applicant that he is not suitable to be appointed as Driver and direct the respondents 1 and 2 to appoint the applicant in the post vacated by the third respondent on 11.8.1989. This should be done within one month from the date of communication of this order. There is no order as to costs.

  
(A.V.HARIDASAN)  
JUDICIAL MEMBER

31.7.90

  
(S.P.MUKERJI)  
VICE CHAIRMAN

31.7.90