

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No. 551/89 199  
~~K.A. Devaky~~

DATE OF DECISION 28.6.90

K.A. Devaky Applicant (s)

Shri P.V.Mohanani Advocate for the Applicant (s)

Versus

The Director, Central Respondent (s)  
Institute of Fisheries Technology,  
Cochin and another.

P.V.M.Nambiar Advocate for the Respondent (s)

CORAM:

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

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? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

who

The applicant/is now working as Assistant Administrative Officer in the Central Institute of Fisheries Technology (CIFT) at Cochin under the Indian Council of Agricultural Research in this application dated 18th September 1989 filed under section 19 of the Administrative Tribunals Act has prayed that de-reservation of the vacancy of Assistant Administrative Officer in 1982, 1983 and 1984 should be declared as illegal and that respondents 1 and 2 be directed to promote her to the post of Assistant Administrative Officer with effect from 20.11.84 with all

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consequential benefits. She has also prayed that the second respondent be directed to consider her representation dated 27.6.89 at Annexure-VII seeking promotion as Assistant Administrative Officer with effect from 1984. Her further prayer is that the order dated 25th June 1989 at Annexure-VIII issued in implementation of the order of the Tribunal dated 27.4.89 in TAK 628/87 also should be set aside.

The material facts of the case are as follows:

2. The applicant belongs to the Scheduled Caste community. She joined the CIFT as Junior Clerk on 7.9.1962 and was promoted as Senior Clerk on 8.4.68. In 1976 five vacancies of Assistants were to be filled by direct recruitment and by promotion of Senior Clerks on a 50:50 basis. Accordingly, three vacancies were allotted for departmental promotion of which two were un-reserved and one was reserved for Scheduled Caste candidate. Two senior-most Senior Clerks were promoted against two un-reserved posts with effect from 7.8.76. The applicant, as a Scheduled Caste candidate, was, however, promoted as Assistant on 18.11.76. The next promotion was to that of Superintendent after one completes 5 years of service/ as Assistant.

..contd.

When the applicant completed 5 years of service as Assistant on 19.11.81 she was promoted as Superintendent, but when the regular incumbent of that post, Shri P.J. Joseph, reverted from Bangalore <sup>the applicant</sup> being the junior-most Superintendent, ~~she~~ <sup>6</sup> had to be reverted as an Assistant on 21.12.81. She was again promoted as Superintendent along with her two seniors on 28.6.82, but when the regular incumbent Shri Sadanandan, who was on deputation to the ICAR Research Complex, Shillong, reverted to the CIFT, the applicant being the junior-most Superintendent <sup>second</sup> again had to be reverted as Assistant on 16.4.84. This <sup>6</sup> reversion was challenged by her in a writ petition No.6064/84 before the High Court of Kerala which was transferred to the Central Administrative Tribunal and was disposed of as TAK 628/87 by the Tribunal in its judgement dated 27.4.89 (Annexure-VI). By this judgement the order of reversion dated 16.4.84 was set aside and the Tribunal directed that the applicant should be promoted as Superintendent with retrospective effect from 16.4.84 with all consequential benefits of seniority and pay. The Tribunal also directed that her promotion from 28.6.82 as Superintendent has to be considered to be regular promotion. The respondents accordingly issued the impugned order dated 27.6.89 promoting the applicant as Superintendent from 16.4.84

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in implementation of the judgement of the Tribunal. During the pendency of the aforesaid writ petition the applicant was promoted as Superintendent from 8.4.85 and as Assistant Administrative Officer from 14.7.86. The applicant claims that she should have been promoted as Superintendent against the reserved vacancy from 19.11.81 and not from 28.6.82. According to her, the Tribunal by its judgement dated 27.4.89 declared the vacancy of Superintendent which arose on 19.11.81 as a reserved vacancy for Scheduled Caste. Her further contention is that on the basis of her promotion from 19.11.81 she became eligible for promotion to the next higher post of Assistant Administrative Officer after completing 3 years of service on 20.11.84. She has stated that a vacancy of Assistant Administrative Officer was created in 1982 which was to be given to a Scheduled Caste candidate but the vacancy was kept unfilled till 1984. Instead of promoting her in 1985 the post was de-reserved and the same was filled up by promoting Shri P.J. Joseph with effect from 8.5.85. Another vacancy of Assistant Administrative Officer arose in 1986 when the applicant was promoted on 14.7.86. According to her, when she was available as a Scheduled

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Caste candidate eligible for promotion as Assistant Administrative Officer in November 1984, the de-reservation of the vacancy in 1985 was illegal.

3. According to the respondents, during 1982 one post of Assistant Administrative Officer was reserved for Scheduled Caste candidate. In accordance with the Recruitment Rules, the post was to be filled up by promotion of Superintendent with 3 years of service in the grade failing which by deputation of Superintendents (Accounts) or Section Officers. Since no Scheduled Caste candidate was available at the GIFT, the post had to be de-reserved and filled up by a general candidate with effect from 8.4.85. The respondents have clarified that the Tribunal in its judgement dated 27.4.89 held that the short-term vacancy of Superintendent filled from 19.11.81 to 21.12.81 by promotion of the applicant should not be counted against the reservation point but one of the 3 long-term vacancies which arose and filled up in 1982 should be given to the applicant. Since the Tribunal recognized the applicant's promotion as Superintendent as regular only from 28.6.82 she became eligible for promotion as Assistant Administrative Officer with effect from 28.6.85 and accordingly de-reservation of the post of Assistant Administrative Officer and filling it up by a general candidate with effect from 8.4.85 cannot be faulted.

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4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant's claim of promotion as Assistant Administrative Officer with effect from 20.11.84 depends entirely on her assertion that she should have been promoted regularly as Superintendent against a reserved vacancy with effect from 19.11.81 instead of on 28.6.82. If this assertion of her is accepted, then she would have completed the 3 years of service as Superintendent on 19.11.84 and would have been eligible to be promoted to the reserved vacancy of Assistant Administrative Officer. This post was de-reserved in 1985 because no eligible Scheduled Caste candidate was available.

5. The question about the date of regular appointment unequivocally of the applicant as Superintendent was decided by this Tribunal in its judgement dated 27.4.89 in TAK 628/87. A copy of this judgement is available at Annexure-VI. Recalling a few facts, it may be noted that the applicant was promoted as Assistant on 18.11.76 and she became qualified to be promoted as Superintendent after putting in 5 years of service on 19.11.81. She was accordingly promoted as Superintendent on 19.11.81, but when the regular incumbent returned, she had to be reverted on 21.12.81 being the junior-most Superintendent. She was

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again promoted as Superintendent on 28.6.82 against <sup>being the junior-most</sup> one of the 3 vacancies which arose in 1982 but she had to be reverted on 16.4.84 when the regular incumbent reverted on 16.4.84. It is at this juncture that the applicant moved the writ petition which was transferred to the Tribunal as TAK 628/87 seeking, inter alia, a direction quashing that order of reversion dated 16.4.84. It may be noted that in this writ petition she did not challenge her first reversion from the post of Superintendent on 21.12.81. She had been promoted as Superintendent on 19.11.81 but due to the repatriation of the regular incumbent she had to revert as Assistant on 21.12.81. If she had any grievance against her first reversion also as she is making out now and if she was serious about her claim in the instant case of regular promotion as Superintendent from 19.11.81, there is no reason why she should not have challenged the first reversion of 21.12.81 <sup>also</sup> in that writ petition. In the aforesaid judgement this Tribunal accepted her claim of reservation of one of the 3 vacancies which arose in 1982 on the sole ground that the vacancy of Superintendent to which she had been promoted from 19.11.81 to 20.12.81 was a short term vacancy and no reservation can accrue to such a vacancy. The following extracts from the

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aforesaid judgement will be relevant.

"8. As regards promotion to the rank of Superintendent, respondents have themselves admitted that she (the applicant) was first promoted in 1981 on an ad-hoc basis to a reserved vacancy. This was purely on a short term vacancy because, within a period of one month, she had to be reverted when the regular incumbent who was on deputation returned. The contention of the respondent is that by such an appointment - albeit for one month - the reservation point provided for the Scheduled caste candidate stands utilized. Subsequent vacancies are to be filled up on the basis of the later points in the roster which are all non-reserved.

9. We totally disagree with this view as it is not only a narrow view but also defeats the very purpose of reservation and is against the standing instructions on the subject. It is seen from Swamy's Compilation on Reservation and Concessions for Scheduled Castes and Scheduled Tribes that in OM No. 22011/2/76/Estt(D) dated 30.4.76 of the Department of Personnel & Administrative Reforms (DPAR for short), it is clearly stated that "instructions relating to reservation of vacancies for SC/ST for promotions apply only to the regular vacancies." Therefore, an earlier promotion to a short term vacancy of a SC candidate cannot be a bar to that candidate's regular promotion on a regular vacancy on the ground that the earlier appointment has extinguished the point in the roster for the reserved candidate's promotion.

10. Respondents have admitted that after Respondent No.5 was promoted on 7.8.81, the next vacancy, according to the roster, was to be filled by a SC candidate. The short term vacancy that arose on 19.11.81 is not to be counted for this purpose. Three long term vacancies admittedly arose in 1982 and two of them are still held by Respondents No.6 & 7. The third one was held by the applicant till 16.4.84 when she was reverted to accommodate Shri Sadanandan, a regular Superintendent who still holds that post. It is, therefore, clear that one of the three posts had to be given to the applicant, as a vacancy reserved for a Scheduled Caste official. That being the case, the question of seniority in the feeder category of Assistants is irrelevant as far as the applicant's right to hold the post of Superintendent is concerned. The question of seniority will arise only to determine whether Respondent No.6 or 7 should be reverted. Obviously, Respondent No.7 is junior in the cadre of Assistants and it was he, who should have been reverted to accommodate Shri Sadanandan, Superintendent on his return from deputation."

(emphasis added)

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6. It will thus be clear from the above that neither the applicant before us claimed the vacancy of Superintendent which was given to her on 19.11.81, as a regular vacancy nor did the Tribunal find any reason to consider that vacancy to be a long term regular vacancy to which the reservation point will apply. The Tribunal awarded the reservation point to the vacancy of 1982 and declared her to be entitled to that vacancy and on that basis set aside her order of <sup>reversion</sup> reservation dated 16.4.84. Now, if the applicant claims a reservation point against the vacancy which arose in 1981 it will be inconsistent with the aforesaid judgement of the Tribunal which the applicant had accepted without demur and got the benefits. Her conduct amply proves that she was not serious about claiming a regular promotion as Superintendent on 19.11.81 nor was she unhappy about the judgement of the Tribunal. She is thus estopped from raising a belated claim of regular promotion with effect from 19.11.81 long after her claim of regular promotion only from 28.6.82 had been adjudicated upon. The applicant's plea that by its judgement the Tribunal declared "that the vacancy of Superintendent which arose on 19.11.81 was a reserved vacancy for Scheduled Caste" was wholly misconceived. The Tribunal specifically mentioned while referring to the three long term vacancies of 1982 that "it is therefore clear that one of the three posts had to be given to the applicant as a vacancy reserved for a Scheduled Caste candidate". Thus there is neither merit nor force in her claim of regular promotion as Superintendent with effect from 19.11.81. Her reversion as Assistant from 21.12.1981 to 27.6.82 cannot be obliterated or undone.

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7. However, the fact remains that, by virtue of the order of the Tribunal in the aforesaid judgement, the applicant has to be considered to be working as a Superintendent continuously on a regular basis with effect from 28.6.82. She would thus have completed 3 years of service as Superintendent on 28.6.85. Since the 1982 vacancy of Assistant Administrative Officer was de-reserved by the ICAR "subject to the condition that reservation would be carried forward to the next recruitment years as provided for in the rules", the applicant would have been eligible for promotion as Assistant Administrative Officer against any vacancy which arose between 28.6.85 and 14.7.86 when she was actually promoted as Assistant Administrative Officer. This is because, she was the senior-most SC superintendent eligible for promotion as Assistant Administrative Officer against the reserved vacancy after 28.6.85.

8. In the facts and circumstances, we allow this application only to the extent of declaring that the applicant would be entitled to promotion as Assistant Administrative Officer against the first vacancy if any that arose between 28.6.85 and 14.7.86. We accordingly direct the respondents that if there was such a vacancy--whether filled up or not--the applicant should be given notional promotion as Assistant Administrative Officer

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from the date subsequent to 28.6.85 and prior to  
or existed.  
14.7.86 when that vacancy arose<sub>6</sub>. She will be entitled  
to all consequential benefits of pay and seniority  
as Assistant Administrative Officer from that notional  
date.

There will be no order as to costs.

  
(N. Dharmadan) dt. 6.90.  
Judicial Member

 28.6.90  
(S.P. Mukerji)  
Vice Chairman