

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.567 of 2010

Thursday, this the 04th day of August, 2011

CORAM:

Hon'ble Dr. K.B.S Rajan, Judicial Member
Hon'ble Ms.K Noorjehan, Administrative Member

Mr.T.K Peethambaran,
 S/o Late T.K Kandan
 aged 53 years, Electronic Supervisor
 Fisheries Survey of India
 Cochin – 16
 residing at Kunnel House
 Nadakkavu P.O
 Udayamperoor
 Ernakulam – 682 307

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Applicant

(By Advocate – Mr.P.A Kumaran)

V e r s u s

1. Union of India
 represented by the Secretary to Government
 Ministry of Agriculture, Department of Animal Husbandry
 Dairying and Fisheries, Krishi Bhavan, New Delhi
2. The Director General
 Fisheries Survey of India
 Mumbai
3. Zonal Director, Fisheries Survey of India
 Kochi – 682 005
4. The Director in Charge, National Institute of Fisheries Port Harvest
 Technology and Training, Cochin - 16

..... Respondents

(Bt advocate – Mr.Sunil Jacob Jose, SCGSC)

This Original Application having been heard on 04.08.2011, the Tribunal on the same day delivered the following :

ORDER

By Hon'ble Dr.K.B.S Rajan, Judicial Member -

1. The applicant, through this Original Application, has prayed for the following relief:-


i To quash Annexure A-1;

ii. To declare that the applicant is entitled to upgradation of pay to the pay scale 5000-8000 at par with the Foreman under the respondents with effect from 01.01.1996.

iii. To direct the respondents to upgrade the pay scale of the applicant to the scale of 5000-8000 with effect from 01.01.1996.

iv. To direct the respondents to draw and disburse the arrears in pay consequent to upgradation of pay scale with effect from 1.1.1996.


2. Briefly stated, the applicant commenced service as an Electronic Supervisor in the pay scale of Rs.1400-2300 on 11.12.1992. He is a Diploma holder with effect from 01.01.1996. The pay scale of the post held by him was revised to Rs.4500-7000. As such, vide paragraph 50.23 and 50.24 of the 5th Pay Commission Report, the Diploma holders in the pre-revised scale of Rs.1400-2300 were to be placed in the higher scale of Rs.5000-8000. Thus the applicant moved a representation requesting to fix his pay in the pay scale of Rs.5000-8000 vide Annexure A-2 dated 28.10.1997. This was followed by Annexure A-3 communication dated 12.01.1998, in which the applicant had annexed order dated 29.11.1997 wherein the Union Territory of Lakshadweep Administration as well as the Ministry of Defence had revised the pay scale of Rs.1400-2300 in respect of diploma engineers to Rs.5000-8000. As the latter also did not elicit any response, yet another representation dated 17.04.2000 (Annexure A-5) was sent by the applicant. This was followed by Annexure A-6 and Annexure A6(b) representations dated 12.07.2000 and 29.12.2000, respectively. It was later on by Annexure A-7 communication dated 19.04.2001 that the office of the Director, Integrated Fisheries Project had informed the applicant that the request for upgradation was examined in consultation with Ministry of Finance in view of lower alternate qualification instead of "Diploma



holders" prescribed in the Recruitment Rules for these posts, the proposal had not been agreed to by the Implementation Cell one Shri N.K Krishnankutty, Assistant Foreman in IFP along with some others moved O.A 637/03 claiming higher pay scale of Rs.5000-8000 from the pre-revised pay scale of Rs.1400-2300. The said O.A was allowed vide order dated 17.11.2005 (Annexure A-9), keeping in view para 54.38 of the Vth CPC recommendations. This order of the Tribunal, when challenged before the Hon'ble High Court in Writ Petition Civil No.23423/2006, the Hon'ble High Court upheld the decision of the Tribunal vide Annexure A-10. The decision of this Tribunal as upheld by the Hon'ble High Court, was implemented by the respondents after their attempt to challenge the High Court judgement through SLP 13940/08 was unsuccessful (Annexure A-12 refers). On finding that the pay scale of Supervisor (Electrical), Supervisor (Civil) and Assistant Foreman had been upgraded vide Annexure A-12, the applicants made one more representation Annexure A-13 dated 24.04.2009. This representation was referred to the Ministry of Agriculture and thus Annexure A-1 order dated 17.12.2009 came to be passed whereby the proposal for enhancement of pay scale had been negated on the ground that alternative qualification has been prescribed in the Recruitment Rules.

3. Hence the above O.A praying for the relief as extracted in para 1 above.

4. The respondents have contested the O.A. The facts as contained in the O.A are not disputed. When the case was taken up with the Ministry, vide Annexure R-4 letter dated 11.07.2000, the Implementation Cell had desired to have a look at the hierarchial pattern and also to confirm as to whether any relativities were likely to be disturbed on account of revision of pay scales of these posts. It is after careful consideration and on the basis of the fact that in respect of the posts in question lower alternate qualification instead of diploma had been prescribed, that the final rejection letter came to be issued.



5. The applicant has filed rejoinder reiterating his stand as taken in the O.A.
6. The counsel for the applicant emphasised that the case of the applicant could be covered under 54.38 of the vth CPC recommendations.
7. The counsel for the respondents invited ^{to} our attention to order dated 18.11.09 in O.A 677/08, wherein an identical matter was considered when the claim of the applicant therein had been rejected. The review application filed in respect of this order also stood rejected very recently.
8. Arguments were heard and documents perused.
9. The post of Electronic Supervisor is governed by the Recruitment Rules which, inter alia, provide that educational qualification is as under:-

- “ (i) Matriculation or equivalent
- (ii) Diploma in Radio or Telecommunication Engineering with 3 years experience in Electronic service
- Or
- Any government Recognised Trade certificate in Radio or Telecommunication Engineering service with a minimum of 5 years experience in the service of Radio or electronic equipment. “

10. The above qualification does not provide for a diploma as the minimum qualification. Instead a lower alternate qualification has been provided for. Paragraph 54.38 of the Vth CPC recommendations reads as under:-

“ We find that the direct recruitment qualification for the initial pay scale of technical supervisors in Workshop is Diploma in Engineering or relevant discipline or graduation in science. We have, as a general principle decided to improve the remuneration of Diploma Engineering in government “

11. In the order dated 18.11.2009 in O.A No.677/2008 this Tribunal referred to 50.23 and 50.24 and held that where alternate lower qualification is provided for, such posts cannot be considered as one for which the minimum qualification is a diploma and accordingly the O.A was dismissed.

12. It is appropriate to extract the relevant portions thereon and the same is as under:-

" 8 On merits, first of all let us examine the recommendation of the Vth CPC referred to by the applicants. Paragraph 50.23 and 50.24 are extracted below:

"We have carefully considered the demands of the federation and the views of the administrative Ministries/Departments in the light of our general approach on the pay scales of different professional/technical groups of staff and existing relativities between technical and non-technical categories. We have, as a general rule, decided to improve the initial recruitment pay scale of Diploma engineers in government. We accordingly, recommend following pay structure for engineering subordinate cadres:

<u>Existing</u>	<u>Proposed (in present terms)</u>
1400-2300	1600-2660

50.24 These pay scales will apply mutatis mutandis for diploma engineers in different cadres depending upon the availability of specific existing pay scales. We have also recommended specific pay structure for different engineering cadres.

It is true that the Vth CPC in order to improve the initial recruitment pay scale of Diploma holders, recommended higher scale to them. Therefore, there is no dispute that the Vth CPC has recommended higher scale to Diploma Engineers in Government service. The Recruitment Rules of the respective posts are produced in Annexure A1. The relevant portion is extracted below:

**Marine Electrician
Essential Qualifications**

- 1 Diploma in Electrical Engineering
- 2 3 years experience in Electrical repairs in Shipyards, Ports, Fisheries Institutes, Dredging Corporation etc.

OR

- 1 S.S.C.
- 2 ITI/NCTVI certificate in Electrical Trade



- 3 5 years experience in Electrical repairs in Shipyards, Ports, Fisheries Institutes, Dredging Corporation, etc.

Refrigeration Mechanic

Essential

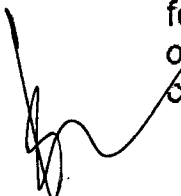
- 1 Diploma in Air Conditioning
- 2 3 years experience as Refrigeration Mechanic in a reputed firm, etc.

OR

- 1 ITI/NCVT Certificate in Air conditioning & Refrigeration
- 2 5 years experience as a Refrigeration Mechanic in a reputed firm

From the above it is very clear that Diploma is not the minimum Essential qualification prescribed for the posts held by the applicants, ITI with 5 years experience is the alternative minimum qualification required. It is true that the applicants possess the Diploma qualification but an ITI with 5 years experience is also eligible to be recruited to the post. If the applicants' argument that a Diploma holder is entitled to higher scale is accepted, the same scale has to be granted to an ITI holder also who is eligible to be appointed to the post. Two scales cannot be granted to a post depending on the qualification of the incumbent - higher scale to Diploma holder and ordinary scale to ITI holder. The scale of pay is attached to the post and not to the incumbent depending on his qualification. That is, if a Degree/Diploma / ITI holder is appointed to the post, they would be eligible for the scale of pay of the post and not for different pay scale depending on their qualification. In this view of the matter, the contention of the applicant that as Diploma holder he is entitled to be granted a higher pay scale cannot be accepted.

9 The applicants have relied on the order of this Tribunal in O.A. 881/04. In that case, the applicant was initially appointed as Supervisor (Civil) in the scale of pay of Rs. 1400-2300. The case of the applicant was that the revised higher scale was granted to Processing Assistants, Marketing Assistants, Scientific Assistants, Head Clerks etc who had also like him been given the pay scale of Rs. 4500-7000. The post of Supervisor (Civil) are promotion posts and the Diploma in Civil Engineering was an essential qualification for promotion to those posts. Hence, the Tribunal declared that the applicant was entitled to get the pay scale of Rs. 5000-8000 w.e.f. 1.1.1996 and he shall also be entitled to the consequential benefits of arrears on account of difference in pay. The posts like Processing Assistants, etc are also Supervisory/Degree posts. In the case on hand, the applicant is not appointed to a supervisory post or to a post the minimum qualification of which for original recruitment is Diploma in Engineering. Hence, we are of the view that the case of the applicants is not similar to the case relied on by them.



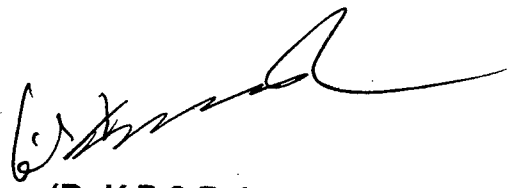
10 In this view of the matter the OA fails, it is accordingly dismissed. No costs. "

13. We are in full agreement with the reasoning contained in the above paragraph of the Tribunal's order.

14. In view of the fact that the minimum qualification as per Recruitment Rules to the post hold by the applicant is not a diploma but something lower than that, the Original Application is fails and accordingly it is dismissed.

(Dated this the 04th day of August, 2011)


(Ms.K Noorjehan)
Administrative Member


(Dr.K.B.S Rajan)
Judicial Member

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