

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.600/2001

Tuesday, this the 30th day of September, 2003.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

A.N.Mohanan,
Technical Officer, T-6,
Krishi Vigyan Kendram,
Central Marine Fisheries Research Institute,
Narakkal-682 505. - Applicant

By Advocate Mr K.V.Kumaran

Vs

1. Director,
Central Marine Fisheries Research Institute,
P.B.No.1603, Tatapuram.P.O.
Kochi-14.
2. Union of India represented by
Director General,
Indian Council of Agricultural Research,
Krishi Bhavan,
New Delhi-110 001. - Respondents

By Advocate Mr P Jacob Varghese

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant who is presently working as Technical Officer(T.O.)(T-6) at Krishi Vigyan Kendra(KNK), Central Marine Fisheries Research Institute(CMFRI), Narakkal, claims to have been recommended for promotion to the next higher grade viz.,T.O.(T-6) from T-5 by the DPC held in December 1991 and is therefore not satisfied with the promotion to T-6 with effect from 1.1.96 allowed as per A-6 order dated 16.10.97. The applicant's case is that, being the seniormost officer in

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T-5 with unblemished service records and having been found suitable by the DPC for promotion to the next higher grade viz, T-6, the applicant ought to have been given such promotion with effect from 1991 itself. The applicant made several representations in that regard directly and through the National Commission for SC & ST vide A-4 and A-5. According to the applicant, the 1st respondent vide A-7 letter dated 31.3.97 informed the applicant that the ICAR's decision on the clarification sought regarding combined seniority KVK/TTC staff and CMFRI staff for promotion was still awaited and that the promotion post of T0 (T-6) could be filled only on receipt of decision of ICAR in that regard. However, by A-8 communication dated 3.4.2000 the 1st respondent informed the applicant that the vacancies of T.O.(T-6) already available had been adjusted with T.O.s in the grade of T-5 on their placement in to T-6 grade and that therefore no vacancies of T-6 under promotion quota were available for filling up for the time being. A further representation A-9 was made by the applicant with a request to create a supernumerary post in T-6 grade to safeguard his interest retrospectively from the year 1991. The said representation was rejected by the 1st respondent as per A-10 memo dated 3.3.2001. The applicant is aggrieved by A-8 letter and A-10 memo which according to him, amount to denial of promotion of T-6 grade which the DPC recommended with effect from November 1991. The applicant accordingly seeks orders of this Tribunal quashing A-8 and A-10 and directing the 1st respondent to promote the applicant to T-6 post with effect from November 1991 when the DPC found him suitable for promotion from T-5 to T-6 post with monetary and other service benefits.

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2. The O.A. is resisted by the respondents by filing reply statement wherein it is stated that as per the then existing rules, the promotion of technical personnel or grant of financial upgradation for T-5 grade T.O.s was by recourse to either of the two procedures: (i) Career Advancement through assessment of merit by way of promotion from one grade to the next higher grade irrespective of occurrence of vacancies in the higher grade or grant of advance increments in the same grade on the basis of assessment performance on expiry of a prescribed period of service; (ii) promotion of 33 1/3% vacancies in grade T-6 under Category-III from amongst persons from Grade T-5(Category-II) possessing qualifications prescribed for Category-III which would be effective from the date of taking over of duty on promotion to the higher post or the date of meeting of the DPC whichever is later. According to respondents, there was a vacancy in T-6 grade in 1991 and steps had been taken to convene the DPC. However, several representations were received in the meanwhile from eligible T.O.(T-5) of CMFRI claiming that Krishi Vigyan Kendras(KVK) and Technical Training Centres(TTC) were separate establishment and hence combined seniority list of KKV/TTC and CMFRI staff would adversely affect the promotion prospects of the CMFRI staff. This led to a series of consultations and deliberations and it was decided by the Council that KKV etc. in the ICAR are the units of the Institutes and hence there cannot be separate seniority list. As per R-6 communication from the ICAR, it was decided that future appointments in T-6 grade of Category-III should be made only after obtaining approval of ICAR headquarters. As per R-7, the Technical

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service Rules were modified according to which the method of promotion against 33 1/3% of vacancies in grade T-6 from eligible persons in Grade T-5 had been dispensed with. Hence the applicant was informed that the vacancies of T-6 already available were adjusted with the T.O.s in grade T-5 on their placement in T-6 grade and that there was no vacancy of T-6 under promotion quota available. Respondents would submit that in the meanwhile, the Assessment Committee recommended the applicant's promotion to the next higher grade of T.O. T-6 as per the Career Advancement Scheme of the Technical Service Rules of the ICAR with effect from 1.1.96. The applicant's case for promotion could not be considered in view of the objections raised by other incumbents borne on the strength of CMFRI, Kochi and therefore the matter had to be deliberated upon and decided. The applicant's case could not be considered for genuine administrative reasons and it is not as if the applicant was denied his due promotion which eventually was given on the basis of the recommendations of the Assessment Committee. In any case, the applicant should have preferred an appeal to the appellate authority against the decision of the Council within the period of limitation and hence the present application could not be entertained, according to the respondents.

3. We have heard Shri K.V.Kumaran, learned counsel for the applicant and Shri P.Jacob Varghese, learned counsel for the respondents. Learned counsel for the applicant argued that the applicant was the seniormost in T-5 grade with commendable service records when he was considered for

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promotion to the post of T.O. T-6 grade by the DPC in November 1991. Since no promotion was given to him, the applicant had brought the matter to the notice of the higher authorities and he was informed that certain representations received by the technical staff of the Institute with regard to the feasibility for maintaining combined seniority list were under consideration by the Council and a clarification in that regard was awaited. The whole delay of deciding on the applicant's promotion to T-6 on the basis of the DPC which was held in December 1991 was attributable to the respondents and not to the applicant, according to the learned counsel. Inviting our attention to the correspondence in regard to the objections of certain technical staff of CMFRI in the matter of maintaining a combined seniority list by merging KVS and TTC staff with CMFRI staff, learned counsel for the applicant would forcefully contend that even as per the respondents' own admission, there was a vacancy available under the promotion quota and that it could not be filled on account of the failure of the respondents to take a decision on the matter promptly. Learned counsel would plead that the references raising objections against the combined seniority was intended only to block the applicant's promotional prospects. Learned counsel also would urge that the correspondence between CMFRI and the ICAR would indicate that the question of filling up the vacancy of T.O. T-6 meant for promotion on the sanctioned strength of the Institute was to be taken on receipt of the advice from the ICAR. Since eventually the ICAR took the decision to the effect that maintenance of a separate seniority list for KVK and the technical personnel of CMFRI

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could not be acceded to since the KVK and TTC are units under the ICAR and hence there could not be any separate seniority list. For those units, the applicant's claim stood vindicated and therefore the respondents ought to have considered the applicant's promotion to T.O. T-6 grade with effect from 1991 itself, learned counsel would plead. Shri Jacob Varghese, learned counsel for respondents on the other hand would strongly rely on the detailed reply statement and would contend that administrative action to fill the promotion quota vacancy in T-6 was taken in time, but the objection raised by the technical staff of the CMFRI and the representations filed by some of them led to a comprehensive reference to the ICAR for proper deliberation and decision. Since the whole process was time consuming in view of the fact that diverse aspects had to be considered, the post could not be filled by promotion. It is also pointed out by the learned counsel that as per the existing rules, the recommendation of the DPC would be valid only for one year. The recommendation of the DPC could not be given effect to after 1992 and fresh proceedings had to be conducted. Therefore, any further consideration of the applicant's case for promotion required conduct of a fresh DPC, according to learned counsel. He would further point out that in the meanwhile, on the basis of merit assessment, the applicant was inducted in T-6 grade and since thereafter there was no promotion quota vacancy in T-6 grade the applicant's case could not be considered. It was also not possible to accede to the request of the applicant to create a supernumerary post since technical service rules did not permit creation of such supernumerary post. The learned

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counsel for the respondents would sum up his argument by stating that the O.A. is barred by limitation since the applicant's cause of action arose in 1992 as the recommendation of the DPC, if at all there be any, would lapse after December 1992. Therefore the applicant's claim for giving effect to the DPC's recommendations in 1991 was not tenable under the law, the learned counsel would maintain.

4. On consideration of the facts of the case, we find that the fact that the applicant was considered for promotion to T-6 grade against the promotion quota vacancy of 1991 is not effectively denied by the respondents. However, it is an admitted fact that the applicant made a representation in November 1992 itself as is clear from A-3 letter dated 25.2.95 addressed by the Administrative Officer, CMFRI to the applicant. Relevant extract of the said letter are reproduced hereunder:

"The vacancy available for promotion is from the Institute sanctioned strength. Some of the Technical Staff of the Institute have submitted representations protesting against the inclusion of the names of Tech. staff of KVK and TTC also for consideration of promotion. The matter has therefore been referred to the Council seeking clarification in this regard. The reply is still awaited. In the meantime one of the Technical Staff of the Institute has filed a petition before the Central Administrative Tribunal, Ernakulam Bench challenging the inclusion of the names of Technical Staff of KVK/TTC also for consideration for promotion for the post on the Institute side. Thus the matter of filling up of the vacant post of T-6 on the Institute's strength is sub-judice now. This disposes off your representation dated 4.11.1992."

The applicant did not proceed to take appropriate action to get his right declared if he was not satisfied with the respondents' reply. The applicant has not produced any

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evidence with regard to the proceedings of the DPC alleged to have been held in November/December 1992. We do not know ^W that recommendation was made by the DPC. Hence this matter is beyond verification now. Even if the DPC held in November/December 1991 recommended the applicant for promotion to T-6 grade, there is nothing on record to show that the DPC proceedings were confirmed or validated by the competent authority. The recommendation was valid only for one year. The applicant does not appear to have taken note of this inspite of having been informed that the vacancy could be filled only after appropriate decision from the ICAR was received. The whole delay arose on account of certain objections raised by the technical staff of the Institute with regard to the desirability of maintenance of combined seniority involving KVK and TTC and the CMFRI. They wanted separate seniority lists to be maintained in order that their promotional prospects might not be affected. Unfortunately, the reference made to the ICAR took considerable time for deliberations and consultations in arriving at a final decision. However, it would appear that as per R-6 communication dated 8.1.96 the ICAR decided that future appointments in T-6 grade of Category-III Telecom Services should be made only after approval of ICAR Headquarters. Any promotion to T-6 could be made only after Council's approval was obtained and the DPC's recommendation, if at all there be any, during 1991, would be of no consequence, according to us. In any case, the applicant has lost his legal right by not acting promptly though he was aware that because of the objections raised by the technical staff in CMFRI and because

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of the legal action taken by some of them by filing an O.A. before the C.A.T., the matter might be delayed and his interest might be jeopardised. There is no challenge against R-6 as far as we can see. Again by A-7 dated 31.3.97, the applicant was clearly told that the promotion post of T.O. T-6 could be filled up only on receipt of the decision from the ICAR. After examining the feasibility of maintaining a separate seniority list to ICAR eventually took the decision that it was not possible to accede to the demand of the technical staff for maintaining separate seniority list. Meanwhile, the applicant along with other T.O.s T-5 grade were assessed in accordance with the provisions of the Career Advancement scheme and were accordingly placed in T-6 grade. Thus, the available vacancies in T-6 grade under promotion quota were used up leaving no further vacancy. In our considered view, though the applicant might have been considered by the DPC in 1991, due to a number of intervening events that brought about change in the whole procedure concerning promotion to T-6 and due to the time taken to sort out the objections of the technical staff of CMFRI, the merit of which we are not concerned with here, and due to the applicant's own failure to take appropriate legal action to safeguard his right, if any, the proceedings of the 1991 DPC have lost its relevance. The respondents cannot be said to have gone back on any of their promises nor caused any deprivation to the applicant. There is no malafide, personal or legal. All the vacancies in T-6 happened to be used up on account of placement of T.O.s T-5 grade including the

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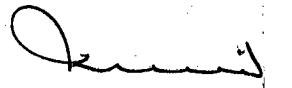
applicant in higher grade. The provisions of technical service rules did not permit creation of supernumerary technical officers post in T-6 grade.

5. In the light of the factual position explained above, we hold that A-8 letter dated 3.4.2000 and A-10 memo dated 3.3.2001 cannot be faulted. The O.A. fails and is accordingly dismissed. There is no order as to costs.

Dated, the 30th September, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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