

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.607/2006

Tuesday this the 1st day of July, 2008.

CORAM:

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Dr. K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

M.P.Sasidharan,
S/o Late Pappu, Bosun,
Central Institute of Fisheries Nautical
and Engineering Training Unit,
Chennai, Residing at Mayithra House,
Pizhala, Ernakulam District. Applicant

(By Advocate Shri T.A.Rajan)

vs.

1. Union of India represented by
Secretary to Government ,
Ministry of Agriculture,
Department of Animal Husbandry,
Dairying & Fisheries, New Delhi.
2. The Director,
Central Institute of Fisheries Nautical
and Engineering Training,
Foreshore Road, Kochi-16.
3. The Deputy Director,
Central Institute of Fisheries Nautical
and Engineering Training Unit,
Chennai – 13.
4. The Chief Inspector (c & a),
Central Institute of Fisheries Nautical
and Engineering Training,
Foreshore Road, Kochi-16.

(By Advocate Shri M.M.Saidu Muhammed, ACGSC)

The application having been heard on 23.6.2007, the Tribunal on 1-7-08, delivered the following:

ORDER

HON'BLE DR. K. B. S. RAJAN, JUDICIAL MEMBER

The issue in this O.A. is short and simple. The applicant belonging to reserved category, joined the service as Bosun in Central Institute of Fisheries Nautical and Engineering Training (CIFNET) on 21-01-1981. His function

included assisting the next immediate superior, the Skipper in the operating/running of the Fishing Training Vessels, demonstrating the institutional and post institutional trainees to use the Navigation equipments available on board the vessel, imparting practical training. During his service, the applicant passed Certificate of Competency as Skipper (Fishing) from Mercantile Marine Department in June, 1985, vide Annexure A-1. He is the lone reserved candidate possessing this certificate in his organization. The applicant was, from 2003, appointed, on ad hoc basis, as skipper in regular existing vacancies. Annexure A 2 series refer.

2. There are three vacancies to the post of Skipper and there are three fishing vessels in the department. Of the three only one was occupied, while the other two have been vacant since 1994 and 2003 respectively. The applicant is entitled to be considered for the said post. He has therefore, requested the respondents for consideration for promotion to the post of Skipper, vide Annexure A-3, but the same was rejected on the ground that the applicant does not possess the essential qualification of Certificate of Competency as Skipper Grade I for fishing vessels issued by the Mercantile Marine Department or equivalent Qualification and hence, the department is not in a position to consider him for regular promotion to the post of Skipper. Annexure A-4 refers. The main grounds of challenge of the applicant against the rejection order of the respondent as contained in para 5 of the application are as under:-

- a) Applicant has passed the Certificate of Competency as Skipper (Fishing) from Mercantile Marine Department in June, 1986 and on the basis of the same he has been promoted, though on ad hoc basis, as Skipper, which function, he has been discharging without any complaint from his superiors. As such, refusal to promote the applicant as Skipper on regular basis is not appropriate.

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b) There was no course as Certificate of Competency as Skipper Grade I or Grade II. The course available then was certificate of Competency as Skipper and based on the same many were given promotion as Skipper on regular basis.

c) Recruitment to the post of Skipper as in extant at the time when vacancy arose in 1994, vide Annexure A-5, provided for Certificate of Competency as Skipper for Fishing Vessels issued by the Mercantile Marine Department and there is no specification that the same should be of Grade I. As such, vacancy arising at that time should be filled up as per the then existing Rule.

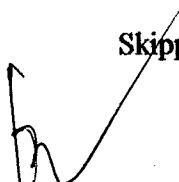
d) Though the existing rule as on date prescribes the qualification of Certificate of Competency in Skipper Grade I, vide Annexure A-6, there is absolutely no one that could fulfill this requirement and as such, relaxation of rules would be essential.

e) Similar Organizations such as Fisheries Survey of India (FSI) have not prescribed the qualification of Certificate of Competency in Skipper Grade I. As such, stipulation of this qualification is illegal.

f) The applicant is the senior most and is holding the post of Skipper on ad hoc basis. As such, the respondents should consider his case for regular promotion as Skipper with the qualification he has.

3. The respondents have contested the OA and filed their reply, to which the applicant filed rejoinder. Additional reply has been filed which inter alia states, that the respondents' office is in the process of revising the existing Recruitment Rules for the post of Skipper.

4. Counsel for the applicant submitted that, strictly speaking the respondents ought to have considered the case of the applicant for promotion to the post of Skipper on the basis of his educational qualification he has, in respect of that



vacancy which occurred in 1994 as at that time the stipulation is not certificate of competency in the grade of Skipper Gr. I. Even if the revised recruitment rules are followed, as none with the requisite qualifications is available, the respondents ought to have invoked the power to relax.

5. Counsel for the respondent confirmed that amendment to the Recruitment Rules was floated in 2006 and the same has not so far been finalized. In case the same fructifies, it would result in the original qualifications being restored.

6. Arguments were heard and documents perused. It is true that vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules, as held by the Apex Court in the case of Y.V. Rangaiah v. J. Sreenivasa Rao, (1983) 3 SCC 284. However, if a conscious decision has been taken not to fill up the vacancy till such time the amendment to the recruitment is made, then instead of Y.V. Rangaiah, it would be the case of Dr. K. Ramulu that would apply. The Apex Court specifically dealt with the case of Y.V. Rangaiah and then adverted to the above law, as could be seen in the decision of Dr. K. Ramulu vs S. Surya Prakash Rao (1997) 3 SCC 9.

7. As regards relaxation of rules, it is to be made clear that, that is a discretionary power and such a discretionary power cannot be compelled to be invoked, much less in a particular fashion.

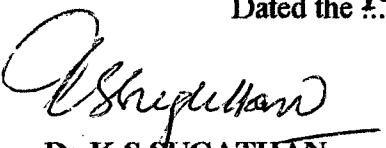
8. However, it is seen that the respondents are amending the Rules and the same was initiated in 2006. There is no real reason, much less justifiable reason, to delay the notification for such a long time.

9. If the recruitment as revised is amended to bring back the earlier recruitment Rules, the same would readily make the applicant eligible for consideration for the post of Skipper. In that event, on his selection, his past ad hoc service may also qualify to be regularized. For, admittedly, the applicant has been performing the duties as Skipper for quite some time now, against a regular vacancy. He is the senior most and as such, his appointment if crystallized on regular basis, the same would be in continuation of his ad hoc promotion. As held by the Constitutional Bench in the case of Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715, *if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.*

10. The respondents have themselves stated that step to amend the Recruitment Rules had been taken as early as 2006. It is felt that the respondents should, in the interest of the organization as well as the employees, ~~should~~ take expeditious action to finalize the amendment. A period of six months from the date of communication of this order would, in our opinion, be reasonable to have the decision taken in regard to the amendment proposed. And, if as per the amended Rules, the applicant is eligible and on assessment he is also found suitable, then his case of promotion on regular basis as Skipper be effected in which event, as held in the Maharashtra Direct Recruit Class II case referred to above, the earlier ad hoc period should also be considered for regularization. Ordered accordingly.

11. Under the above circumstances, there shall be no orders as to cost.

Dated the 1st July, 2008.


Dr. K.S. SUGATHAN
ADMINISTRATIVE MEMBER


Dr. K.B.S. RAJAN
JUDICIAL MEMBER