

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 63/2005

WEDNESDAY THIS THE 1st DAY OF NOVEMBER 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.K.B.S. RAJAN, JUDICIAL MEMBER**

- 1 V.P. Pradeepkumar S/o N.P. Panicker
Senior Observer,
Meteorological Centre,
Thiruvananthapuram,
residing at Saravanam, PTP Nagar,
Thiruvananthapuram.
- 2 R. C. Jayakumar S/o V. Ramachandran Pillai
Senior Observer,
Meteorological Centre,
Thiruvananthapuram,
residing at TC 34/21, Rajeevam,
Maruthamkuzhi
Thiruvananthapuram.

By Advocate Mr. George Cherian

Vs.

- 1 The Union of India
represented by Secretary
Department of Science & Technology
New Delhi.
- 2 Director General of Meteorological
Office of the Director General of Meteorology
Mausam Bhavan, Lodi Road,
New Delhi-110 003
- 3 The Deputy Director General of Meteorology
Regional Meteorological Centre
Chennai-6

Respondents

By Advocate MR.TPM Ibrahim Khan,SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This OA has been filed by the applicants for a direction to the respondents to give promotion to the post of Scientific Assistant from among Senior Observers on the basis of seniority from 1992 onwards and to fill the backlog of 75% and to quash Annexure A-4 order and to direct the respondents not to conduct any departmental competitive examination to fill the post of Scientific Assistants against 25% examination quota without filling 75% by seniority quota.

2 The applicants are Senior Observers in the Meteorological Department of the Government of India and have been holding the post for the last 18 years. Though the post of Scientific Assistant is filled from the feeder category of Senior Observers in the ratio of 1:3 on the basis of examination and seniority, according to the applicants the same has not been observed by the respondents. In particular, they have pointed out that in the year 1997 the second respondent conducted a departmental competitive examination for drawing up a panel for promotion to the post of Scientific Assistant against 25% of vacancies in the cadre against examination quota (Annexure A-1). The examination was conducted and 105 candidates were promoted but only 75 Senior Observers were promoted on the basis of seniority whereas 240 posts should have

been filled in the seniority quota. Similar examination was conducted in 2003 on the basis of Annexure A-2 notification by which 40 persons were promoted under examination quota and to maintain the ratio at least 120 regular candidates ought to have been promoted on the basis of seniority. The applicants have been making representations to the second respondent requesting to promote them. Since there was no reply, the first applicant filed another representation on 3.11.2004 (Annexure A-4) which has now been rejected by Annexure A-6 stating that no persons junior to the applicants have been promoted to the post of Scientific Assistant. The applicants are thus aggrieved by the conduct of the respondents in not filling up the 75% quota earmarked for seniority and the DPCs not being convened regularly to effect promotion to the post of Scientific Assistant. On these grounds they have assailed Annexure A-4 and seek a direction to the respondents not to conduct Departmental Competitive examinations which action according to them is unjust and illegal curtailing their right for promotion.

3 Respondents have filed a reply statement denying the averments of the applicants. They have submitted that the vacancies in the cadre of Scientific Assistant under the seniority-cum-fitness quota have been filled up regularly and as a result of this, persons under the seniority cum fitness quota are in excess in

comparison to the number of persons placed under Departmental Examination quota. The total number of sanctioned posts in the cadre of Scientific Assistant as on 31.12.2004 is 1305, out of which 25% posts reserved for Departmental Examination quota are 326. Persons in position in the cadre of Scientific Assistant under seniority cum-fitness are 931 and under Departmental Examination quota are 186 as on 31.12.2004. It can thus be seen that cumulative total in the Examination category is much lower than the requirement and the Seniority category is more or less fully represented. The departmental competitive examination has been conducted for only 27 vacancies which is well within the 25% quota and is as per the Recruitment Rules. The vacancies available under seniority quota is only 22 and they are reserved for ST candidates. They have denied the presumption made by the applicants that the DPC meetings are not being convened regularly. The Assured Career Progression Scheme has also been implemented by giving them two financial upgradations in the hierarchy after completion of 12/24 years of regular service. The applicants herein have already earned the first financial upgradation in the scale of Scientific Assistant w.e.f. 31.8.1999 and 5.1.1999 respectively.

- 4 In the additional reply statement the respondents have elaborated the vacancy position and the details of vacancy position

under Seniority Cum Fitness quota has also been given in a Table form for the period from 1992-2004. They have also given in a detailed format the running account of promotions offered and the number of persons joined under the two streams. They have further stated that there are 188 vacancies in the Department as a whole. Of these 136 vacancies cannot be treated as regular vacancies as they have arisen due to adhoc promotion of Scientific Assistants to Assistant Meteorologist Grade-II. Therefore only 52 vacancies were available as on 31.12.2004. Twenty five of these vacancies belong to ST and are kept unfilled for want of eligible persons as persons of these category are not available in the zone of promotion. As such, vacancies available for filling under examination quota has been fixed as 27. It is further submitted that there are 67 persons in the General Category^{to} which the applicants belong, waiting for promotion under the seniority quota. Under these circumstances the O.A. is devoid of any merit.

5 A rejoinder has been filed by the applicants reiterating that the ratio of 75:25 is being followed from 1973 onwards except for a short period from 2001 to 2003 when the entire promotions have been made under the seniority cum fitness quota. They also contended that examinations are being conducted purportedly to fill up 25% of the total vacancies and not to fill up the shortfall under 25% of the

sanctioned posts as now made out. They have also contended that adhoc promotions granted to the applicants may not be treated as a substitute for regular promotion.

6 The learned counsel for the applicant strenuously contended that the practice being adopted by the respondents in filling up the 25% vacancies by conducting the Departmental Examination without filling up the 75% corresponding seniority quota is against the provisions of the Recruitment Rules. According to him when in 1997 the examination was conducted for 105 candidates, 335 persons should have been promoted and in 2003 when , 40 persons persons were promoted under examination quota 120 should have been promoted under the seniority quota whereas only 35 were promoted. Similarly, in the impugned order dated 29.10.2004 it is proposed to fill up 27 vacancies when correspondingly 81 persons should have been promoted under the seniority quota by which the applicants would have got a chance for promotion. The learned counsel for respondents reiterated that the respondents have acted strictly in accordance with the Recruitment Rules.

7 We have heard the learned counsel appearing on both sides and have gone through the records produced before us. The Recruitment Rules are produced in Annexure A-9. The number of posts included in the Schedule under the category of Scientific Assistants and method of selection has been prescribed as under:

Schedule

<i>Name of post</i>	<i>No. of posts</i>	<i>Classification</i>	<i>Scale of pay</i>	<i>Whether selection post or non-selection post</i>	<i>Whether the benefit of added years of service admissible under rule 30 of CCS (Pension Rule 1972)</i>	<i>Age limit for direct recruits</i>	
1. Scientific Assistants (including 3 posts of Scientific Assistants designated as Inspector of Observatories and 1 post designated as Store & Supply Assistant and one post of Head Clerk now redesignated as Scientific Assistant incharge.)	1414 (1987)	Subject to variation dependent on work load	General Central Service Group-C Non-Gazetted Non-Ministerial	1400-40-1800-EB-60-2300	75% Non-selection 25% selection	No	Not applicable

8 It is evident from the above provisions in the Recruitment Rules that the percentages are earmarked on the number of posts in the cadre of Scientific Assistants and it is not 75% or 25% of the vacancies arising from time to time as has been interpreted by the applicants. On the basis of this prescription in the Recruitment Rules, the ratio between the Seniority Cum Fitness and the Examination Quotas have to be maintained on the total number of posts and the shortfall in each category will have to be filled up on

that basis. The respondents have furnished the tables (A) and (B) showing the running account of number of promotions made in each stream and the number of persons under each promotion quota who joined on promotion. These are extracted below:

Table-A

<i>Sl.No.</i>	<i>Date and year of promotion</i>	<i>Total No. Of promotion offered</i>	<i>No. of posts under SCF (Promotion quota 75%) / Persons joined on promotion</i>
1	30.4.1992	140	82
2	26.4.1993	145	83
3	24.2.1994	75	59
4	04/04/95	211	152
5	15.6.1995	87	59
6	12/10/95	46	28
7	31.5.1996	109	65
8	11/09/96	63	39
9	April 1997	22	19
10	22.10.1997	142	90
11	10/02/98	70	59
12	23.3.1998	32	16
13	23.8.2002	108	93
14	01/04/03	17	14
15	12/03/04	84	73
16	30.4.2004	3	3
17	31.05.2004	5	5
	Total	1359	939

Table-B

<i>St.No.</i>	<i>Date and year of promotion</i>	<i>Total No. Of promotion offered</i>	<i>No. of posts filled under Deptt. Quota (promotion quota 25%)/Persons joined on promotion</i>
1	13.10.1992	75	73
2	14.7.1995	36	33
3	21.8.1997	93	79
4	30.6.2003	36	36
	Total	240	221

9 Prima facie consideration of the tables and a comparative position as projected in the tables would straight away belie the contentions of the applicants that the promotion quota is not being filled on regular basis by the respondents. In fact the converse appears to be true. It is quite evident from the year-wise figures given that the respondents have been regularly filling up the 75% seniority cum fitness quota whereas under the examination quota the examinations have been held in the year 1992, 1995, 1997 and 2003 only. In these years, the existing vacancies for the preceding years have been clubbed and examinations conducted.

10 The two contentions of the applicants therefore seem to arise from the mistaken notion that whenever vacancies in the examination quota materialise, three times that number should be filled up by promotion quota on seniority basis. This misunderstanding is caused by the wording of the circulars issued by the respondents for conducting the examination. For example, in Annexure A-4

notification the subject is mentioned as "Departmental Competitive Examination for filling 25% of the vacancies in the cadre of Scientific Assistant". This has created an impression that the examination is proposed for 25% of the vacancies thereby raising a natural presumption that three times of vacancies exist under the seniority quota whereas what the respondents have intended is that the examination is being conducted under the 25% stream to be filled on examination basis prescribed under the rules and the shortfall in this regard is proposed to be made up. Had this position been made clear by mentioning in the notification that the proposal was only for making good the shortfall which exists under 25% examination quota, such a misunderstanding would not have arisen in the minds of the applicants.

11 The respondents have mentioned that in the examination conducted in 1997, 22 persons were promoted in April, 1997 and 142 persons were promoted in October, 1997. Hence, a total of 164 persons were promoted under the seniority quota whereas 93 persons were promoted under the 25% quota. Similarly in the year 2003, 17 persons were promoted under the 75% quota whereas 36 persons were promoted under 25% examination quota. The reduced number of promotions made under 75% quota in 2003 seems to have been the result of excessive promotions made under this quota during the period from 1997 to 2002. In any case year-wise analysis will show that the applicants cannot have any genuine grievance that

the seniority quota was not being operated on a regular basis. In fact, the alleged imbalance between the two quotas is tilted more in favour of the seniority category. However, to maintain true spirit of the Recruitment Rules, the respondents should have ensured that no short fall arises under both the quotas at any point of time by conducting the DPC meetings and also examination on regular basis instead of clubbing the vacancies and also stating clearly the total number of vacancies available every year and the quota apportioned for each of the category while issuing the notification for the departmental examinations. This is the only lacuna which the applicants can effectively point out against the Department. We would therefore direct that in future notifications the respondents shall mention clearly the total number of vacancies and the reasons for filling up the vacancies in conformity with the provisions of the Recruitment Rules

12. The total sanctioned strength according to the respondents is 1305 as on 31.12.2004 and the men in position are 1117 and the available vacancies are only 188. Of these, 136 are only adhoc vacancies and therefore only 52 vacancies are available for filling up. Against this, the respondents have proposed to fill up 27 vacancies under examination quota where there is already a shortfall of 140. Though there is a shortfall under the seniority quota also, the respondents have stated that there are 25 posts reserved for ST candidates which are not available for filling up. Even if these

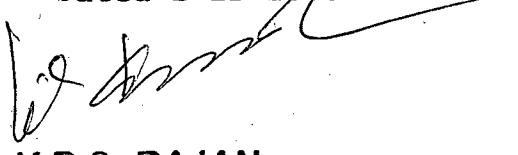
vacancies are shown to be available after calculating the actual adhoc vacancies and reassessing the number of regular posts, 67 persons who are under the general category and who are senior to the applicants are waiting for promotion. It is the contention of the applicants that the number of existing vacancies is 188 and 27 alone is filled under the examination quota, the balance posts have to be released for seniority quota is not tenable as the percentage is not to be applied to the vacancies, but to the actual number of posts as stated earlier in accordance with the provisions under the Recruitment Rules. Hence, the question whether the vacancies now available are adhoc or regular does not assume much significance and it is for the respondents to decide whether to fill up the vacancies or keep them vacant for some time. Since there is a shortfall under the seniority quota also though it may be lesser as compared to the shortfall under the examination quota it is open to the respondents to make good this short fall by resorting to promotions under the seniority quota. The respondents cannot shift their stand at one time contending that so far they have been making good the shortfall and subsequently that they have switched over to filling up the vacancies on the basis of quota. The apportionment has to be necessarily on the basis of the Recruitment Rules and consistently done in accordance with the prescriptions made in the Rules. In short, we reject the argument of the applicants that whenever 25% is filled up on the basis of examination three times that number has to be filled up by seniority. At the same time it has to be held that the

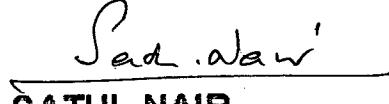
respondents shall at all time maintain the balance of 75% and 25% between the two categories as enjoined in the Recruitment Rules. For that purpose they have to assess the shortfall under both the categories every year and take recourse to recruitment accordingly.

13 We however do not find any need for reviewing the promotions from 1992 onwards, but would direct the respondents to assess the shortfall ~~xx~~ once for all and make good the shortfall under both the streams and thereafter for subsequent years keeping the balance between the two categories on one to one basis by filling up the posts under the same category wherein the vacancy arises. Whether the applicants in this OA will be benefited by such an exercise or not cannot be predicted by us. We also do not see any need to quash Annexures A-4 and A-6. The applicants have already been granted first financial upgradation and on the basis of the directions above after assessment of shortfall from the year 2004 to date, the respondents shall arrive at the actual number of posts to be filled up under seniority quota and if the applicants come within the zone of consideration of these posts they shall be eligible to be promoted.

14 The O.A. is disposed of with the above directions. No costs.

Dated 1 11 2006


DR. K.B.S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN