

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 619/ 2006

Thursday, this the 6th day of November, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

M.R.Tyagarajan,
Mechanic,
Integrated Fisheries Project,
Kochi.Applicant

(By Advocate Mr Vellayanai Sundara Raju)

v.

1. Union of India represented by
Secretary to Government,
Ministry of Agriculture,
New Delhi.
2. The Director,
Integrated Fisheries Project,
Kochi.
3. K.D.Saju,
Assistant Operator,
Integrated Fisheries Project,
Kochi.
4. The Liaison Officer of SC/ST employees,
Integrated Fisheries Project,
Kochi.
5. K.K.Vinod,
Assistant Operator,
Integrated Fisheries Project,
Kochi.Respondents

(By Advocate Mr Subhash Syriac (for R.1, 2 & 4) (Not present)

(By Advocate Ms Maya T.S. for R. 3 & 5) (Not present)

This application having been finally heard on 28.8.2008, the Tribunal on 6.11.2008 delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The grievances of the applicant are against the promotion of the 3rd respondent, viz, Shri K.D.Raju and the direct recruitment of the 5th respondent viz, K.K.Vinod against ST points in the cadre of Assistant Operator. The relief sought by him in this O.A are as under:

- (a) To call for the records leading to the promotion of 3rd respondent against a S.T point in the Assistant Operator cadre by declaring that his promotion to that cadre was in violation of the settled position of law enunciated by the Hon'ble Supreme Court in R.K.Sabbarwal's case – AIR 1995 SC 1371 regarding filling up the roster point meant for SC/STs in a cadre.
- (b) To quash Annexure A-3 order of 2nd respondent by declaring that there is no reservation for SC or ST in a single vacancy in any post or cadre and hence the appointment of 5th respondent as Assistant Operator by inviting applications from open market, exclusively from S.T is untenable and illegal.
- © To issue necessary direction to the 2nd respondent to promote the applicant in the existing post of Assistant Operator and fix his seniority with retrospective effect and with all consequential benefits, by holding that the applicant was fully eligible from 26.3.2003 onwards for getting promotion to that post and denial of it was highly illegal and untenable.
- (d) To issue necessary direction to 4th respondent declaring that he miserably failed in discharging his functions as Liaison Officer for SC/ST employee of IFP and he ignored to redress the grievances of the applicant which is highly illegal.

2. The brief facts of the case as stated by the applicant are that he belongs to Scheduled Tribe category, he has been working as a Mechanic under the 2nd respondent with effect from 26.3.1998 and he is eligible to be considered for promotion to the next grade/cadre of Assistant Operator having a sanctioned strength of 5 out of which 4 posts are permanent and 1 post is temporary. According to the relevant recruitment rules, 75% of the vacancies in the cadre of



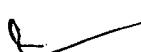
Assistant Operators are to be filled up by promotion from the feeder category of Mechanic with 5 years regular service and the remaining 25% vacancies by direct recruitment. When the Annexure A-2 seniority list of Assistant Operators was published in the year 1990, the following 5 persons were included in that cadre.

1. Shri V.G.Wilson (officiating as Refrigeration Engineer)
2. Shri R Ayyappan
3. Shri J George
4. Shri V.K.Padmanabhan
5. Shri KK Paramu

Thereafter, the following 10 persons were promoted as Assistant Operators against the vacancies occurred from time to time.

1. K.T.Chandran
2. M.K.Raghavan
3. P Sarasan
4. K.X.Augustine
5. T.R.Babu
6. P.C.Zacharia
7. P.V.Babu
8. A.NarayananKutty
9. Chandramohan Nair
- 10.K.D.Saju

When the post based roster was introduced on 2.7.1997, after the judgment of the Apex Court in R.K.Sabrawal's case [AIR 1995 SC 1371] the respondents were expected to maintain 2 post based rosters, one for promotion quota and the other for direct recruitment quota. At that time, S/Shri R Ayyappan,



J.George, V.K.Padmanabhan and K.K.Paramu of Annexure A-2 were working as Assistant Operator on regular basis. Again, 8 more persons have been appointed to the post on regular basis. Since the cadre under promotion quota consists of only 3 posts, the 13 point roster prescribed for the purpose of reservation (Annexure A-1) is applicable and the 11th point therein is earmarked for an ST candidate. But the 2nd respondent did not grant promotion to ST candidates while filling up the vacancy at the 11th point and the applicant, though he was eligible and entitled to be considered for promotion to that post, has been left out. On the other hand, the 3rd respondent, Shri K.D.Saju was promoted against the 11th point meant for ST in March 2005. Moreover, he was granted promotion by a DPC held in the middle of year 2004 against an ST vacancy which arose in March, 2005. According to the applicant, the non-consideration of his candidature for promotion as Assistant Operator against ST point at 11 is highly illegal and arbitrary. Thereafter, the 5th respondent, Shri KK Vinod, an ST candidate was appointed through direct recruitment (Annexure A-3). The said appointment was also against the Rules as the respondents have invited applications only from the ST candidates when no reservation is applicable in appointment against a single vacancy. He has also alleged that the second respondent has not been maintaining 2 posts based rosters in the category of Assistant Operator from 2.7.1997 onwards. Therefore, Shri K.D.Saju is to be reverted as Mechanic and he has to be promoted in his place.

3. The applicant has also alleged that the 4th respondent has failed in his duties as the Liason Officer of the SC/STs in the office of the 2nd respondent as prescribed in the Annexure A-5 office order dated 16.2.2006. According to him, the 4th respondent has not scrutinised the proposals for dereservation of vacancies and acted against the dictum of the Supreme Court that the vacancy meant for SC/ST shall not be filled up with any other candidate and if there is



dearth of SC/ST candidates, it could be filled up after de-reserving the vacancies in accordance with law as laid down in AIR 1995 SC 1371.

4. Respondents in their reply statement have also submitted that the cadre strength of Assistant Operator was only 5 and according to the existing recruitment rules, 75% vacancies have to be filled by promotion and 25% by direct recruitment. However, they have submitted that separate rosters for promotion and for direct recruitment are being maintained and the vacancies in these categories are being filled up on rotational basis between promotion and by direct recruitment in the ratio 75:25 applying the principles of reservation even though the direct recruitment is limited to only one post. They have also submitted that in a cadre not exceeding 13 posts, the ST point come only at 14th point including the initial recruitment as per the Annexure A-1 model roster and when the roster reaches only that point, an ST candidate can be promoted. In the present case, the roster has reached only upto the 12th point which is earmarked for unreserved category and the contention of the applicant that the 11th point must be given to ST candidate is wrong. They have further submitted that the post of Refrigeration Engineer was filled up on regular basis by the seniormost Assistant Operator in January 1986 and the Annexure A-2 seniority list produced by the applicant was only a draft list issued in 1983. Out of the 5 persons mentioned in Annexure A-2 seniority list only 3 persons came under the promotion quota and the names of V.G.Wilson and R.Ayyappan were not included in the 40 point roster because the roster was maintained only for the promotions made from 27.11.1972 onwards and Shri Wilson was appointed directly to the post of Assistant Operator and Shri Ayyappan was promoted before 27.11.1972. However, their names have been included in the 40 point roster in the cadre of Ice Plant Operators as they were promoted to that post after 27.11.1972. The promotion given to Shri K.T.Chanchan was against a



carry forward SC point in the 4th point of the 40 point roster and since the 4th point of the 40 point roster was an ST point it was given to Shri M.K.Raghavan belonging to ST category as per the court directions and Shri Chanchan was placed in the 5th point even though he was senior to Shri M.K.Raghavan. Shri TR Babu was not included in the promotion roster because he was not promoted on regular basis but only on ad hoc basis. So the promotion roster including the initial recruitment and replacement is as follows:

1. Shri J George
2. Shri V.K.Padmanabhan
3. Shri KK Paramu
4. Shri MK Raghavan
5. Shri KT Chanchan
6. Shri P Sarasan
7. Shri KX Augustin
8. PC Zacharia
9. Shri PV Babu
10. Shri A Narayananakutty
11. Shri K Chandramohanan Nair
12. Shri K.D.Saju

They have also clarified that the promotion roster starts from Shri J George, V.K.Padmanabhan and K.K.Pamu as the existing employees who were promoted to that cadre under 40 point roster and the replacement starts with Shri M.K.Raghavan, K.T.Chanchan, P.Sarasan, K.X.Augustine, P.C.Zacharia, P.V.Babu, A.Narayananakutty, K.Chandramohanan Nair and lastly K.D.Saju at the 9th point of replacement. Hence, according to the respondents, it is not against 11th point reserved for ST that respondent No.3, Shri K.D.Raju was appointed, as averred by the applicant. They have also submitted that the DPC which met on 6.7.2004 has considered the candidates for appointment to the post of Assistant Operators. On that date, 2 regular posts of Assistant Operator were available consequent on the retirement of the incumbents in the post. Another two anticipated vacancies were also taken into account which included a vacancy which was due to arise as resultant vacancies on promotion to the post of



Freezing Plant Operator and another vacancy which would arise on retirement of the incumbent to the post of Assistant Operator on 1.3.2005. The first vacancy fell under the direct recruitment quota and the next three vacancies fell under the promotion quota. As per the post based roster for promotion, the vacancies under the promotion quota fell on the 10th, 11th and 12th points which were unreserved. The DPC after due evaluation of all the aspects recommended a panel of three candidates including the 3rd respondent for promotion against the promotion quota and also recommended to initiate action to fill the direct recruitment quota. The third respondent was thus promoted against the 12th point which was unreserved. In the meantime, action was also initiated to fill up the vacancy, which fell in the direct recruitment quota during October, 2004 and consequently the 5th respondent was selected and appointed. It was done as per Government orders on reservation according to which isolated post and individual post are not excluded from reservation order. Hence isolated and individual posts in small cadres are grouped with posts in the same class for the purpose of reservation, taking into account status, salary and qualification etc for the post. The Assistant Operator is an individual post and it is grouped with other posts of the same class belonging to technical cadre as per Annexure R-2. In the roster for direct recruitment, the ST point falls at the vacancy on the 14th point and, therefore, it was filled up with respondent No.5, a direct recruitment ST candidate, as per Annexure A-3.

5. The respondents 3&5 have also filed a joint reply which is not very different from the reply filed by the respondents 1 & 2.

6. In the rejoinder, as against the submissions of the respondents, the applicant has submitted that against 4 substantive vacancies, only one post was



meant for direct recruitment and as it was a single post set apart for direct recruitment, no reservation is applicable for SC/ST in the direct recruitment and the statement to the contrary is untenable and incorrect. He has also alleged that the Annexure R-1 and R-2 rosters are not maintained by the 2nd respondent in terms of DOPT guidelines dated 2.7.1997 and the Annexure R-2 had been prepared by the respondents only for the purpose of producing it before this Tribunal and, therefore, the same has to be discarded. It is his further contention that in a cadre having 3 posts for promotion, the 11th point must be in favour of the ST candidate and the recruitment in all cadres having upto 13 posts except Sl.No.7 having 7 posts as cadre strength, rest of the 12 must be initially filled with non SC/STs. He has also submitted that a perusal of Annexure R-2 would reveal that it contained 8 different categories and post based roster came into effect from 2.7.1997 onwards and most of the above cited categories are exclusively promotion categories from different feeder cadres and appointments to those categories not through direct recruitment. As per the guidelines of DOPT dated 2.7.1997, all the existing promotees in a cadre to be adjusted against the point in the roster starting from the earliest appointment appointment to find out the representation given to SC/STs. No replacement point or any combined point is in the roster. He has also reiterated his allegation that the 4th respondent alone was responsible in granting promotion to 3rd respondent and in appointing the 5th respondent by inviting applications illegally from ST candidates alone in violation of statutory rules.

7. The applicant has also filed rejoinder in response to the reply statement of respondents 3 and 5 on similar lines.

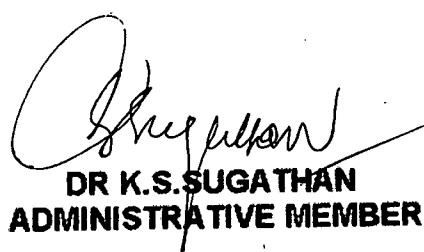
8. We have heard Shri Vellayani Sundara Raju, counsel for the applicant, Shri Subhash Syriac, counsel for respondents 1, 2 & 4 and Ms Maya T.S,

counsel for respondents 3 & 5 respectively. The basic contentions of the applicant are two fold: (i) in a cadre which consists of only 3 posts, as per the "Model Roster for Promotion for cadre strength upon 13 posts", the 11th point is to be given to an ST candidate by way of reservation, and (ii) in the direct recruitment quota, if there is only one post, no reservation is applicable. As regards the first contention is concerned, according to the applicant, the 3rd respondent Shri K.D.Raju an unreserved candidate was promoted as Assistant Operator against the said 11th point whereas, being an ST candidate, he should have been promoted against the said point. For this purpose, he counted the first three persons already promoted prior to 2.7.1997 and 8 persons upto the 3rd respondent, promoted thereafter. He has also counted that the 11th point in the Annexure A-1 roster horizontally from the first replacement slot to the 11th replacement slot. The respondents on the other hand stated that in a 13 point roster only the 14th point is to be earmarked for ST candidate and the 3rd respondent was promoted only against the 12th point which consisted of the 3 initial recruitments and 9 replacements made after 2.7.1997. In order to determine the roster points, they have calculated them in terms of the following notes below Model Roster (Annexure R-1).

1. For cadre of 2 to 13 posts the roster is to be read from entry 1 under column cadre strength till the last post and then horizontally till the last entry in the horizontal row i.e. like "L".
2. All the posts of a cadre are to be earmarked for the categories shown under column initial appointment. While initial filling up will be by the earmarked category the replacement against any of the post in the cadre shall be by rotation as shown horizontally against the last post of the cadre.
3. The relevant rotation by the indicated reserved category could be skipped over if it leads to more than 50% representation of reserved category."

It is, therefore, seen that the respondents have correctly followed the prescribed procedure in determining the reservation points in this case. It is also clear from their submission that reservation is applicable in direct recruitment of isolated

posts. The respondents have grouped them together with the similar posts as done by them vide Annexure R-2. In view of the above position, we do not find any reason to interfere in the matter. Accordingly, the O.A is dismissed. There shall be no order as to costs.



DR K.S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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