

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 74 of 2009

Wednesday, this the 24th day of February, 2010

CORAM:

Hon'ble Mr. George Paracken, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

P. Sulaiman, aged 56 years, S/o. late P.M. Yosuf,
 Fishery Officer, Central Institute of Fisheries,
 Nautical & Engineering Training, (CIFNET),
 Fine Arts Avenue, Cochin, residing at 'Panikka Veedu',
 Malippuram PO, Cochin 682 511. **Applicant**

(By Advocate – Mr. R. Sreeraj for Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by Secretary,
 Department of Expenditure, Ministry of Finance, New Delhi.
2. The Secretary to the Government of India,
 Department of Animal Husbandry, Dairying and Fisheries,
 Ministry of Agriculture, New Delhi.
3. The Director, Central Institute of Fisheries, Nautical &
 Engineering Training, Cochin-16. **Respondents**

(By Advocate – Mr. Subhash Syriac, ACGSC)

The application having been heard on 24.2.2010, the Tribunal on the same day delivered the following:

O R D E R

By Mr. George Paracken, Judicial Member -

The applicant in this Original Application has impugned (i) the Annexure A-1/1 letter of the second respondent, namely, the Secretary, Department of Animal Husbandry, Dairying & Fisheries, Ministry of Agriculture, New Delhi dated 16.10.2008 addressed to the third respondent,



namely, the Director, Central Institute of Fisheries, Nautical & Engineering Training (in short CIFNET), Cochin stating that his representation for up-gradation of his scale of pay of Rs. 6500-10,500/- attached to the post of Fishery Officer to Rs. 8000-13500/- as applicable to Senior Instructors of CIFNET consequent upon his transfer from Integrated Fisheries Project (in short IFP) to CIFNET and (ii) the Annexure A-1/2 UO Note of the 1st respondent, namely, the Ministry of Finance, Department of Expenditure dated 1.9.2008 addressed to FA(Agriculture) stating that the proposal of the 2nd respondent for up-gradation of the post of Fishery Officer, CIFNET from the existing pay scale of Rs. 6500-10500/- to Rs. 8000-13500/- has been examined but it could not be accepted. According to them, as the posts in the pre-revised scale of pay of Rs. 5500-9000/- and Rs. 6500-10500/- have been placed in PB-2 with grade pay of Rs. 4200/- based on the recommendation of 6th CPC, there would be no problems of merger of the post of Fishery Officer with that of Instructor (Fishery Technology). They have, therefore, advised the Ministry of Agriculture to merge the post of Fishery Officer in the scale of Rs. 6500-10,500/- with that of Instructor (Fishery Technology) in CIFNET in the scale of Rs. 5500-9000/-. The applicant, on the other hand, has sought a declaration that he is entitled for the salary of Senior Instructors in the scale of pay of Rs. 8000-13500/- with effect from 1.10.2005 as he has been discharging the duties attached to the said post since then. He has also sought a direction to the 2nd respondent to immediately redesignate the post of Fishery Officer as Senior Instructor in the scale of pay of Rs. 8000-13500/- of CIFNET and to assign him proper seniority in the grade and to consider him for further promotion, if



necessary by upgrading his post of Fishery Officer by amending the recruitment rules.

2. The applicant in his Annexure A-3 representation dated 28.6.2006 addressed to the 3rd respondent, namely, the Director, CIFNET, Cochin stated that he had joined the IFP as Junior Marketing Assistant in the scale of pay of Rs. 330-560 (Revised Rs. 4000-6000) in November, 1977 and promoted to the post of Fishery Assistant in 1989 in the scale of pay of Rs. 4500-7000/- and further to the post of Fishery Officer in 2004 in the scale of Rs. 6500-10500/- (Group B Gazetted). While he was continuing in the IFP, the officials of IFP along with their post were transferred to CIFNET as a result of reorganization of IFP. Accordingly, he applicant joined the CIFNET as Fishery Officer. Before issuing the transfer orders to the concerned staff members, the Joint Secretary and Director of Fisheries from Ministry visited IFP and convened a meeting with all officers and staff and heard their grievances. In that meeting, in presence of Director, CIFNET who was in charge of the Director IFP, the representatives of the Ministry assured that the transfers will not detrimentally affect anybody in respect of future service prospects and the posts transferred to CIFNET will be incorporated with the Recruitment rules of CIFNET and the seniority in the existing post will be safeguarded. Identical posts with the same scale of pay of transferred post will be made at par with the posts in CIFNET. If the scale of pay of a post in IFP and that of CIFNET is not identical, it will be treated suitably safeguarding the service prospects of the transferred post etc.



3. He has further submitted that his post of Fishery Officer and the scale of pay of Rs. 6500-10500/- attached to it were different from those posts in CIFNET but nature of duties assigned to him was equal to that of the senior officers in CIFNET in the scale of Rs. 10,000-15200/- or 8000-13500/-. He was also included among the faculty members of the CIFNET and the subjects being dealt with by the Chief Instructor (C&G) and Senior Instructor (C&G) have been allotted to him. Later on, he was given the charge of the Officer in charge Stores in the scale of pay of Rs. 10000-15200 or Rs. 8000-13500/-. He has therefore, requested the respondents to enhance his pay at par with the senior posts in the Fishing Technology Division in CIFNET to safeguard his future service prospects. He has given a similar representation to the 2nd respondent also through the respondent No. 3 who has fully justified his request for up-gradation of his post. In the Annexure A-7 letter dated 19.7.2007 addressed to the respondent No. 2, the respondent No. 3 has stated clearly that the applicant was entrusted with the duties similar to that of Senior Instructor (Group-A, gazetted) of the Institute and he is discharging the said duties satisfactorily. He has also submitted that upgrading the post of FO carrying the pay scale of Rs. 6500-10500/- to that of Senior Instructor in the scale of Rs. 8000-13500/- will not bring any higher financial burden to the exchequer, since the applicant has already been drawing a basic pay of Rs. 7700/- w.e.f. 1.11.2006 and the marginal increase in his basic pay that he may draw on up-gradation is minimal and ignorable. He has, therefore, recommended for the up-gradation of scale of pay of Rs. 6500-10500/- at par with the scale of Senior Instructor i.e. Rs. 8000-13500/- as one time measure. On receipt of the



aforesaid recommendation from the 3rd respondent the 2nd respondent referred the case of the applicant to first respondent, namely, the Ministry of Finance, Department of Expenditure for their concurrence. It is seen from Annexure A-1/2 UO Note dated 1.9.2008 that the first respondent has considered the proposal of the second respondent which has emanated from the third respondent but took an altogether different view. According to said UO Note, they were reiterating their earlier stand without stating what exactly was their earlier stand. However, they have stated that as the posts in the pre-revised scales of pay of Rs. 5500-9000/- and Rs. 6500-10500/- have been placed in PB-2 with grade pay of Rs. 4200/- based on the recommendation of the Sixth Pay Commission, there would be no problems for merger of the post of Fishery Officer with that of Instructor (Fishery Technology). They have therefore, directed the administrative ministry to merge the post of Fishery Officer with that of Instructor (Fishery Technology) in CIFNET. However, the second respondent, again, vide its Annexure A-1/1 letter dated 16.10.2008 advised the third respondent to examine and sent them a proposal for up-gradation of the post of Fishery Officer from Rs. 6500-10500 to Rs. 7450-11500/- in terms of para (iv) of Section I of Part B of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008, since the post carries the minimum qualification of post graduate degree. They have further submitted that on receipt of the proposal, the Ministry will refer the case to the Department of Expenditure through the Integrated Finance Division.

4. Learned counsel for the applicant has relied upon the judgment of the



Apex Court in the case of Selvaraj Vs. Lt. Governor of Island, Port Blair & Ors. - JT 1998 (4) SC 500, and argued that when the applicant was discharging the duties of Senior Instructor/Officer In-charge of Stores he should have been paid according to the salary attached to that posts. The relevant part of the said judgment is as under:-

"3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs. 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

4. The decision of the Central Administrative Tribunal rejecting the claim of the appellant to the aforesaid limited extent is therefore, required to be set aside. The appeals are allowed to the limited extent that the respondents will be called upon to make available to the appellant the difference of salary in the time scale of 1640-2900 during the period from 29.1.1992 to 19.9.1995 during which time the appellant actually worked. It is made clear that the payment of the aforesaid difference amount of salary shall not be treated to amount to any promotion given to the appellant on the said post. It is only on the ground that he had actually worked, as such this relief is being given to him. The difference of salary as aforesaid shall be paid over to the appellant within eight weeks from today. No costs."



5. Though notice was issued to the first respondent they have not filed any reply.

6. In the reply filed by 2nd and 3rd respondentd they have submitted that the applicant on his transfer from IFB to CIFNET was attached to the Craft & Gear Division as a teaching faculty and entrusted with the duties similar to that of Senior Instructor (Group-A gazetted) and applicant has been discharging the allotted duties.

7. When the matter was taken up for consideration today learned counsel for the applicant has submitted that he has the information that the proposal sent for up-gradation of the post of Fishery Officer from Rs. 6500-10500/- to Rs. 7450-11500/- to the first respondent has also not been agreed to by them.

8. We have considered the rival contentions in this case. The undisputed facts are that the applicant was working as Fishery Officer in IFB in the scale of Rs. 6500-10500/- but there are no such posts in CIFNET to which he has been transferred. Therefore, the 3rd respondent on its own has regulated his services in accordance with his educational qualification and experience and entrusted him with the duties assigned to the post of Senior Instructors in the scale of Rs. 8000-13500/- and he has been performing those duties satisfactorily. He has also been admittedly performing the duties of Officer-in-Charge of Stores which is in the scale of Rs. 10000-15200/-, as additional charge. Therefore, as held by the Apex Court in



Selvaraj's case (supra), we have no hesitation to allow the limited prayer of the applicant that he is entitled for the salary of Senior Instructor in the scale of pay of Rs. 8,000-13500/- for the period from 1.10.2005 i.e. from the date he was actually working on the said post. The respondent No. 3 shall therefore, issue necessary orders accordingly and arrears of salary and allowances arising on such orders shall be paid to him within two months from the date of receipt of a copy of this order.

9. Even though the applicant's administrative Ministry, namely, the Ministry of Agriculture, Department of Animal Husbandry, Dairying & Fisheries (respondent No. 2) in consultation with the Director, CIFNET (respondent No. 3) has entrusted him with the duties of Senior Instructor in the pay scale of Rs. 8000-13500/- and forwarded a proposal to the first respondent for upgrading his pay scale from Rs. 6500-10500/- to Rs. 8000-13500/- applicable to Senior Instructors in CIFNET, the first respondent, namely, the Ministry of Finance has not agreed to that proposal. From the Annexure A-1/2 UO Note what is discernible is that they have considered the said proposal but rejected it without assigning any reasons. The said UO note only states that they were reiterating their earlier stand without explaining what exactly was their stand. They have not filed any reply in this OA also explaining their "earlier stand" and the reasons why they have reiterated it. Further we observed that the Annexures A-1/1 and A-1/2 documents impugned by the applicants are only internal correspondence and the respondents have not replied to his Annexure A-3 representation dated 28.6.2006 so far. We, therefore, give an opportunity to the applicant

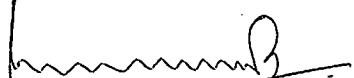


to make another self contained representation to the second respondent through the third respondent. The second respondent shall re-examine his case in consultation with the Ministry of Finance once again and shall pass a reasoned and speaking order as early as possible. Till such time the present arrangement being followed by the respondent No. 3 in assigning him the duty of Senior Instructor shall continue in the absence of any post of Fishery Officer in CIFNET.

10. With the above directions, the OA is disposed of. There shall be no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(GEORGE PARACKEN)
JUDICIAL MEMBER

"SA"