

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 90 OF 2008

WEDNESDAY., this the 15th day of July, 2009.

CORAM:

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

A.A. Abdul Kadir,
Engine Driver Class – I,
Central Institute of Fisheries,
Nautical & Engineering Training,
(CIFNET), Fine Arts Avenue,
Cochin, residing at 'Angevettill House',
Ponjassery P.O., Via Mudickal,
Perumbavoor

... Applicant

(By Advocate Mr. Shafik M.A.)

versus

1. Union of India, represented by the
Secretary to the Government of India,
Department of Animal Husbandry,
Dairying and Fisheries,
Ministry of Agriculture, New Delhi.

2. The Director,
Central Institute of Fisheries,
Nautical & Engineering Training,
(CIFNET), Fine Arts Avenue,
Cochin.

... Respondents

(By Advocate Mr. S. Abhilash, ACGSC)

The application having been heard on 26.05.2009, the Tribunal
on 15-07-09 delivered the following:



ORDER
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, qualified in the competency examination of Engine Driver, fishing vessel, conducted by the Mercantile Marine Department has been functioning as Engine Driver Grade I under the second respondent. This post is held by him on regular basis since 1991 and earlier to the same he was holding the same post on ad hoc or casual basis, with technical break. The next promotional post is Chief Engineer Grade II which is filled up by way of transfer on deputation (including short term contract)/promotion failing which by direct recruitment. Vide Annexure A-4, the requisite qualifications are as under: -

"Transfer on deputation from (Including short-term Contract), officers under the Central/State Government or autonomous institution :- (a) (i) holding analogous posts; or (ii) with 8 years' regular service in the posts in the grade of Engine Driver Class, I and (b) possessing the educational qualifications and experience prescribed for direct recruits under Column 7. Promotion : Departmental Engine Driver Class I with 8 year's regular service in the grade will also be considered and in case he is selected for appointment to the post the same shall be deemed to have been filled by promotion".

2. Column 7 of the schedule, referred to above consists of essential educational qualifications for direct recruits and the same is :

- (i) Matriculation passed from a recognized Board/University or equivalent :

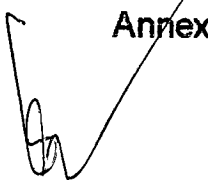


- (ii) Certificate of Competency of MOT first Class or Second Class Engineer (Motor) or Certificate of competency as Engineer (Fishing Vessel) issued by Mercantile Marine Department ;
- (iii) 3 years' practical experience on fishing vessel.

3. With the above qualifications, no candidate has been available. The applicant has been aspirant of the above post on regular basis, though on temporary basis, he had been performing the duties of Chief Engineer Grade II, after availing of the temporary dispensation of the requirement of competency certificate from Mercantile Marine Department.

4. It was expected that the authorities would make the recruitment rules more pragmatic by suitably modifying the recruitment rules as it has been prescribed that every five years, the rules are to be suitably amended. However, the same did not materialize at all.

5. Earlier, when the respondents had chosen to throw open the vacancy of Chief Engineer Gr. II in MV Prashikshini, vide Annexure A-3, and when his request for accommodating him was refused vide Annexure A-2, the applicant approached the Tribunal with OA No. 106/2007 which was disposed of on 21st February 2007 with a liberty to the applicant to make a representation and with a direction to the respondents to dispose of the representation within a time frame. This having been done, the applicant had penned a representation dated 28th February 2007 vide Annexure A-8, requesting the Secretary Department of Animal Husbandry



for relaxation of the rules or making suitable amendment to the Recruitment Rules and to accommodate the existing cadres before resorting to Direct Recruitment. This was however, rejected by the respondents, vide Annexure A-1 order dated 20th April 2007. Hence this application, seeking the following reliefs:

(i) To call for the records relating to Annexure A-1 to A-8 and to quash Annexure A-1, A-2 and A-3, being illegal & arbitrary;

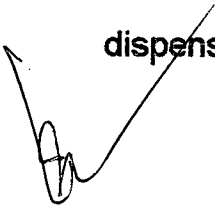
(ii) To direct the respondents to take appropriate action to amend the Recruitment Rules if necessary and to grant promotions to the existing feeder category, in the interest of justice;

(iii) To declare that the applicant is entitled to be promoted as Chief Engineer grade-II, if necessary by relaxing the qualifications as per the Recruitment Rules;

(iv) To issue such other appropriate orders or directions this Honourable Court may deem fit, just and proper in the circumstances of the case; and

(v) To grant the costs of this original application.

6. The applicant had referred to the name of one Shri M.V. Narayanan who was possessing the same qualifications as that of the applicant and who had been afforded the post of Chief Engineer Grade II, without any dispensation and without amending the Rules.



7. Respondents have contested the O.A. Their contention is that as per the manning regulations, the vessels should have a Chief Engineer with a Certificate of Competency as Engineer Fishing Vessel. There are three vessels in CIFNET, one at Headquarters at Cochin, one each at Chennai and Vishakhapatnam Units. The vessel Prashikshani being operated at Cochin is the only vessel having the post of Chief Engineer Grade I and Grade II. The other 2 vessels Skipper II at Chennai and Skipper III at Vishakhapatnam are having the post of Chief Engineer Grade II only. A person with Engine Driver Fishing Vessel cannot hold the post of Chief Engineer. Shri Narayanan was posted as Chief Engineer Gr. II in compliance with the judgment of this Tribunal in TA 169/82 (OP 9021/85) decided on 19-01-1990 as he was satisfying the then existing Recruitment Rules for the post of Chief Engineer Gr.II. In yet another case of **K.C. Udayaprakasan** in OA No. 1017/97, for amendment to the Recruitment Rules, the Tribunal categorically ruled by relying on the Apex Court's decision in the case of **State of AP and Another versus V. Sadanandan & Others**, AIR 1989 SC 2060. Dispensation is sought only for a short duration and amendment to the rules is not possible. The applicant had earlier appeared for the examination of competency certificate of Engineer Fishing Vessel conducted by Mercantile Marine Department, Vishakhapatnam but did not succeed and this information has not been brought out by the applicant in the O.A.

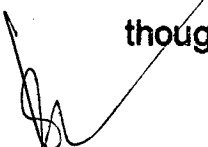
8. The applicant had filed his rejoinder and stated that in so far as the three vessels are concerned, the biggest is MV Prashikshani, which has,



inter alia one Chief Engineer Grade I and One Chief Engineer Grade II. The post of Chief Engineer Grade II has been lying vacant since 2001 and despite attempts by the respondents to fill up the vacancy, none could be available due to the requirement of rare qualifications. In fact as per the manning regulations of the Merchant Shipping Act, the essential qualification for the post of Chief Engineer Grade II who comes under his superior, viz the Engineer-in-charge, (Chief Engineer Grade I) is the competency certificate as Engine Driver Motor Fishing Vessel on Board M.V. Prashikshini. For, the higher qualification is required for the highest post of Engineer Grade I, who has to actually man the ship and the Chief Engineer Grade II is only assisting him. For such a person who is to assist the superior, qualifications as Engine Driver Fishing Vessel would suffice. For example, one Mr. M/V.Narayanan, who has the very same qualifications as that of the applicant, was, prior to his transfer to CIFNET working as Chief Engineer Gr. II in the large Fishery Research Ship M.V. Ristralegger, having a Main Engine, 2200 HP, under an Engineer in charge. He was so posted without any dispensation or without amending the Recruitment Rules.

9. Additional reply had been filed to which the applicant had filed additional rejoinder.

10. Counsel for the applicant argued that here is a case where the applicant has been slogging in the same post for years together and though his services are utilized to perform the duties of Chief Engineer



Grade II, by getting dispensation from Mercantile Marine Department, he has not been afforded the post of Chief Engineer Gr. II on regular basis.


11. Counsel for the respondents has stated that the entire situation has been explained in the counter and the additional reply. That temporary dispensation is given to the applicant cannot enable him to get the post on permanent basis. Amendment to recruitment Rules is the prerogative of the department and judicial intervention is not normally allowed.

12. Arguments were heard and documents perused. The requirement as per the Recruitment Rules are normally to be followed. If provision exists for relaxation of rules to a class or group of persons, the same could be considered by the Government. The Tribunal cannot direct the department to relax the rules and accommodate any one. The Apex Court has in the case of **Govt. of Orissa v. Hanichal Roy, (1998) 6 SCC 626**, where such a direction was issued held as under:

"1. We need not dilate upon the facts in this appeal by special leave against an order of the Orissa Administrative Tribunal. Special leave, it may be mentioned, was granted only in regard to the two respondents herein. They had put in approximately one and a half years' service, but on ad hoc basis. Taking into account the circumstances in which they had so served, the Tribunal held that it found no reason why there should not be a relaxation of the appropriate rule for regularization of their service and ordered accordingly.

2. The Rule that is relevant reads thus:

"14. Relaxation.—When the Government are of opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing, relax any of the provisions of these Rules in respect of any class or category of persons in public interest."




3. The Rule requires the Government to form the opinion, for reasons to be recorded in writing, that it is necessary or expedient to relax any of the provisions of the Rules in public interest in respect of any class or category of persons. We assume for the purposes of this appeal that the case of the respondents herein falls within a "class or category or persons", but we do not think that the Tribunal was right in, in effect, relaxing the appropriate rule itself. Having set out the facts, it should have left it to the Government to take the decision under the rule.

4. The appeal is allowed to the extent that the aforesaid direction by the Tribunal is set aside. The respondents' case shall be examined by the State Government for the purposes of relaxation under Rule 14, having regard to what is stated in the order under appeal and the law as it stands. The decision thereof shall be taken within three months from today.

5. No order as to costs."

13. The applicant has been languishing in the same post on regular basis for nearly a score of years by now. Absence of promotional prospects is one of a disgruntling factors that adversely affect the interest of any employee. In the case of Raghunath Prasad Singh vs Secretary, Home Police Department, Government of Bihar (1988 Supp SCC 519) the Apex Court has held as under:-

"4. Before we part with the appeal, we would like to take notice of another aspect. In course of hearing of the appeal, to a query made by us, learned counsel for the appellant indicated the reason as to why the appellant was anxious to switch over to the general cadre. He relied upon two or three communications which are a part of the record where it has been indicated that there is no promotional opportunity available in the wireless organisation. Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organisation within six months from today by appropriate amendments of Rules. In case the State of Bihar fails to comply with this direction, it should, within two months thereafter, give a fresh opportunity to personnel in the police




wireless organisation to exercise option to revert to the general cadre and that benefit should be extended to everyone in the wireless organisation."

14. Again in **O.Z. Hussain vs Union of India**, 1990 Supp SCC 688, the Apex Court has held as under:-

7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate.

15. In **C.S.I.R. vs K.G.S.Bhatt**, (1989) 4 SCC 635 the Apex Court has held as under:-

"The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors. There cannot be any modern management much less any career planning, manpower development,



management development etc. which is not related to a system of promotions."


16. Referring to the above decisions of the Apex Court, the Principal Bench of the Tribunal in the case of **Debi Mukherjee vs Union of India and others**, (1992) 19 ATC 540, has held as under:-

" In view of the aforesaid legal position, we are of the view that it is the obligation of the Ministry of Health and family Welfare to provide promotional avenues to the applicant who has functioned in the post of Assistant Secretary for several years and has looked after the work of Assistant Director General as and when occasion had arisen. The respondents shall do the needful in the matter within a period of three months from the date of receipt of this order. Till then, the respondents shall not proceed with the filling up of the post through direct recruitment. The interim order directing the respondents to maintain the status quo as regards the continuance of the applicant in the post of Assistant Director General be maintained, is made absolute."

17. When the above order of the Tribunal was challenged before the Apex Court, the appeal was dismissed. The Apex Court has in the case of **P.K. Jaiswal (Dr) v. Debi Mukherjee**, (1992) 2 SCC 148, held as under:-

"6. For the above reasons, we are of the opinion that the decision reached by the Tribunal does not require any interference at our hands in exercise of the power under Article 136 of the Constitution. Hence, the appeal fails and is accordingly dismissed with no order as to costs."

18. Keeping in mind the above dicta laid down by the Apex Court, if the case of the applicant is viewed, certainly his case deserves consideration at the hands of the respondents. It should not be impossible for the respondents to take up the matter with the Mercantile Marine Department




to seek a permanent dispensation for such individuals who have only Engine Driver Fishing Vessel competency certificate to be promoted as Chief Engineer Gr.II and such persons could be employed in such vessels, where a higher authority with the Certificate of competence as Engineer (Fishing Vessel) is to lead the team. Provision exists, as stated above for such relaxation for a class or category of persons. Of course, if the applicant is the lone individual then also the same could be considered, as the Apex Court has held in the case of *Sandeep Kumar Sharma v. State of Punjab*, (1997) 10 SCC 298 as under:

"9. Rule 14 contains the general power of Government to relax the rules. It reads thus:

"14. General power to relax rules.—Where the Government is of the opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons."

10. It is clear that while Rule 14 permits relaxation for a class or a category of persons, Rule 7 preserves the Government's power to relax the physical standard in individual cases. In the present case Rule 7 is the appropriate rule and it was not necessary to embark on Rule 14 at all. But we have noticed that the Deputy Secretary of Home (Government of Punjab) who had sworn to the counter-affidavit before the High Court for the State Government has sought to justify the relaxation made by the Government by confining to Rule 14 of the Service Rules alone. Why did he adopt such a stand when there is a specific rule which empowered the Government to give relaxation of the physical standard, is something we cannot understand or appreciate. Why should the deponent have bypassed Rule 7 which is so explicit in the context? Anyway since the appellant has referred to Rule 7 as the relevant rule we are not disposed to consider the amplitude of Rule 14 in the case.

11. The High Court seems to have taken the view that the only beneficiary of the aforesaid relaxation is the appellant and hence considered it an act of favouritism shown to him. According to the learned Judges "the so-called policy was formulated after the result of the written test was announced with the sole object of securing selection and appointment of the aforesaid candidate because without clearing the standard



of physical fitness he could not have been interviewed by the Commission. This, in our opinion, is nothing but an act of sheer favouritism".

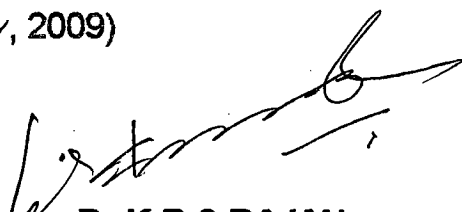
12. *The appellant cannot be blamed for being the only candidate available at present seeking relaxation of physical standards. The same benefit could also have enured to anyone else situated in the same position as the appellant had there been any. Policy wise it is not possible to think that the appellant would have been the only kith and kin of those who suffered on account of the activities of the terrorists in Punjab or those who faced terrorism bravely. Perhaps, in this particular selection the appellant happened to be the only beneficiary of the policy."*

20. In view of the above, the OA is disposed of with the direction to the First Respondent to keep in view the above decisions of Apex Court and also the fact that the Mercantile Marine Department has been granting dispensation for those holding competency certificate as Engine Driver Fishing Vessel to function as Chief Engineer Grade II, and consider either relaxation of the rules or dispensation is sought from the Mercantile Marine Department and communicate the decision to the applicant. Any appointment made in pursuance of the advertisement, which has been made subject to the outcome of the decision in this case, may also be reviewed after the decision is arrived at. This order be complied with, within a period of six months from the date of communication of this order.

21. No cost.

(Dated, the 15TH JULY, 2009)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER