

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 100 of 1999

Monday, this the 19th day of November, 2001

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. K. Prakash,
Principal Incharge,
Institute of Hotel Management &
Catering Technology, G.V. Raja Road,
Kovalam, Trivandrum - 695 527Applicant

[By Advocate Mr. C.P. Sudhakara Prasad (represented)]

Versus

1. Union of India, represented by its Secretary,
Ministry of Tourism, Government of India,
Transport Bhavan, New Delhi - 110 001
2. The Chairman, Board of Governors,
Institute of Hotel Management & Catering
Technology (Trivandrum) Society,
G.V. Raja Road, Kovalam, Trivandrum-695527
3. Institute of Hotel Management & Catering
Technology (Trivandrum) Society,
represented by its Secretary to Board of
Governors, Institute of Hotel Management &
Catering Technology, G.V. Raja Road,
Kovalam, Trivandrum - 695 527
4. The National Council for Hotel Management
& Catering Technology, represented by the
Chief Executive Officer, National Council
for Hotel Management & Catering Technology,
Library Avenue, Pusa Complex,
New Delhi - 110 012Respondents

[By Advocate Mr. P. Vijayakumar, ACGSC (R1, R3 & R4)]
[By Advocate Mr. Renjit. A, GP (R2)]

The application having been heard on 19-11-2001, the
Tribunal on the same day delivered the following:


O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant was appointed as Senior Instructor in the
Institute of Hotel Management and Catering Technology in July,
1991. He was appointed as the Head of Department of the

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Institute in the year 1993. Before being appointed as Senior Instructor in the Institute he had 5 years experience as Chef which was in the managerial position in a hotel and 3 years experience as the Head of Department of the Institute. In 1996, the post of Principal of the Institute of Hotel Management and Catering Technology, Trivandrum was notified by Annexure A3 notification. The requisite experience was for 10 years, out of which 5 years in a managerial position. The prescribed age limit was between 40-50 years. The applicant, who was 37 years old and claimed to be possessed of the requisite qualifications and experience, applied for the post. The interview Board considered the applicant and the only other candidate who appeared and placed them in the panel at Serial Nos.1 and 2 respectively. The Chairman of the Board of Governors addressed the Government of India for approval of the selection and permission to make appointment relaxing the age limit in the case of the applicant. Finding that the 1st respondent did not approve the panel and therefore the 3rd respondent issued Annexure A-1 notification for making a fresh selection, the applicant has filed this application seeking the following reliefs:-


- "a) to call for the records leading to Annexure A1 and to set aside the same in so far as it relates to the selection and appointment to the post of Principal of the Institute of Hotel Management and Catering Technology (Trivandrum) Society.
 - b) to issue a direction to the first respondent to grant approval for the appointment of the applicant as Principal on the basis of the selection made by Respondents 2 & 3, pursuant to Annexure A3 notification.
 - c) to declare that the applicant is entitled to get age relaxation for appointment to the post of Principal on the basis of his selection pursuant to Annexure A3 notification under the provisions contained in the Institute of Hotel Management, Catering and Nutrition (Recruitment and Promotion) Rules, 1982.
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- d) to issue a direction to the respondents to give appointment to the applicant as Principal in the Institute of Hotel Management and Catering Technology (Trivandrum) Society with effect from 16.09.1996, the date on which he was selected for appointment to the said post.
- d)(i) to call for the records leading to Annexure A27 Notification and to set aside the same, in so far as it relates to the selection and appointment to the post of Principal of the Institute of Hotel Management and Catering Technology (Trivandrum) Society.
- e) to pass any other order or direction as deemed fit and proper in the facts and circumstances of this case.
and
- f) to award costs of this proceedings to the applicant."

2. It is alleged in the application that the applicant being exceptionally qualified was eligible for age relaxation, that the relaxation of age, experience and qualification has been made previously as also subsequently in the case of many persons and that the inaction on the part of the 1st respondent in the grant of relaxation and the non-appointment of the applicant is unsustainable.

3. The 2nd respondent in the reply statement has stated that as the Interview Board was satisfied that the applicant was well qualified it sought permission of the 1st respondent for making his appointment relaxing the age limit, but appointment could not be since the 1st respondent did not agree.

4. Respondents 1,3 and 4 contend that as the minimum age required for appointment to the post was 40 years, the applicant who was aged only 37 years was not considered suitable for appointment, and that was why the decision was taken to re-notify the vacancy and to make a fresh selection.



5. When the matter came up for hearing, the learned counsel of the applicant stated that the applicant has resigned from the post of Principal-in-Charge on 17-4-2000 and that he is no more interested in the appointment to the post in question. The learned counsel, however, stated that the cause of action still survives as in the event of the applicant's case being accepted the applicant would be entitled to the monetary benefits consequent on the appointment with effect from 16-9-1996.


6. We have heard the learned counsel of the parties and have perused the materials placed on record. Relaxation in age, experience or educational qualification in the case of an exceptionally qualified person who may constitute a class by himself or in the case of a class of persons is absolutely a prerogative of the competent authority. Going through the materials placed on record, we have not been able to come across any piece of paper which would reveal that even the Board of Governors had taken a decision to relax the lower age limit in the case of the applicant, though it has been stated in some communications that the interview Board had recommended the relaxation. However, appointment to the post of Principal is to be made with the prior approval of the Central Government. Therefore, the relaxation also has to be approved by the Government, which in its wisdom did not agree to the proposal made for relaxation. Power to relax any provision in the Recruitment Rules empowers the Central Government to grant relaxation, but does not clothe a candidate with a legal right to compel relaxation. That relaxation in qualifications or age had been made previously or subsequently in certain cases also does not give a valid cause of action to the applicant to claim relaxation. The circumstances under which relaxation was given in the said cases are not known to this Tribunal. The persons


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in whose favour relaxation was granted are also not before us. If the Government in the present case found it not expedient to grant relaxation, we are of the view that Tribunal has no jurisdiction to intervene and order relaxation. However, as the applicant has already resigned from the service of the respondents as it is stated that the applicant is no more interested in the appointment as Principal (the post in question), we find that no relief can not be given to the applicant. The argument of the learned counsel of the applicant that the applicant would still be entitled to the pay and allowances attached to the post of Principal from 16.9.96, the date of selection, till he resigned from service has no basis because by merely being placed in the panel the applicant does not become entitled to pay and allowances. To be entitled for pay and allowances one should be appointed. The applicant's selection not having been approved by the competent authority, he is not entitled to any relief.

7. In the light of what is stated above, the application is dismissed without any order as to costs.

Monday, this the 19th day of November, 2001


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

APPLICANT'S ANNEXURE

1. Annexure A1 True copy of the Notification published in the Employment News 9-15 January, 1999 inviting applications for appointment to the post of Principal, Institute of Hotel Management and Catering Technology, Trivandrum.
2. Annexure A2 True copy of Clause 1 of Schedule to the Hotel Management, Catering and Nutrition (Recruitment and Promotion) Rules, 1982.
3. Annexure A3 True copy of the Notification Published in Employment News dated 24th Feb-1st March, 1996 for appointment as Principal in the Institute of Hotel Management and Catering Technology, Trivandrum.
4. Annexure A4 True copy of Notification for appointment to the post of Principal, IHMCT, Trivandrum appeared in the Indian Express daily dated 26.2.1994.
5. Annexure A5 True copy of the appointment order to one K.V. Simon as Principal of the IHMCT and Applied Nutrition dated 29th October, 1986
6. Annexure A6 True copy of the Identity Card issued to Mr.K.V.Simon containing the date of birth by the IHMCT, (Trivandrum) Society.
7. Annexure A7 True copy of Notification dated 14.12.1992 evidencing the fact that one Mrs.A.Mullens took over the charge of Principal of the Institute of Hotel Management, Catering Technology and Applied Nutrition, Madras
8. Annexure A8 True copy of appointment order of Sri.C.M.Bhan as Principal of the IHMCT and Nutrition, Gurdaspur dated 24.11.1997.
9. Annexure A9 True copy of the Notification Lr. No.1/2/97.Estt. dated 27.10.1997 evidencing the fact that Mrs.Grace Gideon was appointed as the Principal of the Insitute of HMCT, Madras.
10. Annexure A10 True copy of communication No.81104/II/96/GAD, dt. 18.9.1996 of the Chairman, Board of Governors of IHMCT, Trivandrum to the Govt. of India.

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11. Annexure A11 True copy of communication No.81104/II/96/GAD dt. 16.10.96 of the Chairman, Board of Governors of Institute of HMCT, Tvm. to the Govt. of India seeking approval of the appointment of the applicant.
12. Annexure A12 True copy of communication No.81104/II/96/GAD. dt. 21.12.1996 of the Chairman, Board of Governors of the Institute of HMCT, Tvm. to the Govt. of India seeking approval of the appointment of the applicant.
13. Annexure A13 True copy of reminder No.81104/II/96/GAD, dt.4.2.1997 of the Chairman, Board of Governors of Institute of HMCT, Tvm. to the Govt. of India seeking approval of the appointment of applicant.
14. Annexure A14 True copy of communication No.47(13)/95-HMC dt.20.9.1997 from the Addl.Director General, Dept. of Tourism, Govt. of India, New Delhi to the Chairman, Board of Governors, Institute of HMCT, Tvm.
15. Annexure A15 True copy of the communication No.D.O.No.47(13)/95-HMC. dt.5.11.1997 from the D>G>, Dept. of Tourism, Govt. of India, New Delhi to the Secretary(Tourism), Govt. of Kerala, Tvm. requesting (Tourism), Govt. of Kerala, Tvm. requesting to readvertise the post of Principal.
16. Annexure A16 True copy of communication No.47(13)/95 HMC, dated 8.12.1997 from the D.G., Dept. of Tourism, Govt. of India, New Delhi to the Secy.(Tourism), Govt. of Kerala, Tvm. requesting to readvertise the post of Principal.
17. Annexure A17 True copy of communication No.47(13)/95-HMC. dt. 31st March, 1998 from the D.G., Dept. of Tourism, Govt. of India, New Delhi to the Secretary(Tourism), Govt. of Kerala, Tvm.
18. Annexure A18 True copy of the communication of the 2nd respondent, ie. Chairman, Board of Governors, Institute of HMCT, Tvm. of D.O. No.81104/T1/96/GAD. dt. 30.5.1998 to the Secy., Tourism, Govt. of India, pointing out the legal infirmities of the direction given by Govt. of India.
19. Annexure A19 True copy of the communication No.47(13)/95-HMC dt. 16.10.1998 from the Additional D.G. , Dept. of Tourism, Govt. of India, New Delhi to the Chief Executive Officer, National Council for Hotel MCT, New Delhi.

20. Annexure A20 True copy of the communication No.48576/TB3/98/GAD. dt. 5.12.1998 sent by the Chairman, Board of Governors, Institute of HMCT, Tvm. to the D.G. of Tourism, Dept. of Tourism, Govt. of India, New Delhi.
21. Annexure A21 True copy of the communication No.AF.48(2)/98-NC/4174 dt. 14/23.12.98 sent by the Dy. Director, National Council for Hotel MCT, New Delhi to the Principal, IHMCT, Tvm.
22. Annexure A22 True copy of the communication No.48576/TB3/98/GAD, dt.1.1.1999 sent by the 2nd respondent ie. Chairman, Board of Governors, Institute of HMCT, Tvm. to the Dy. Director, National Council for Hotel MCT, New Delhi pointing out the illegality in readvertising the post of Principal.
23. Annexure A23 Relevant extract of the ITDC Recruitment, Promotion and Seniority Rules.
24. Annexure A24 True copy of the detailed scales of pay corresponding the minimum and maximum of scales.
25. Annexure A25 True copy of the Certificate issued by Food & Beverages Manager, Taj Group of Hotels.
26. Annexure A26 True copy of Certificate issued by the G.M., The Trident, Cochin.
27. Annexure A27 True copy of the Notification for appointment to the post of Principal at Institute of Hotel Management & Catering Technology issued by the 4th respondent in the Employment News dated 21-27 August, 1999.

RESPONDENT'S ANNEXURE

1. Annexure R4(1) True copy of the notes forwarded from Dept. of Personnel & Training.
2. Annexure R4(2) True copy of the legal advice dt. 26.3.97 tendered by Ministry of Law & Justice.

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