

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 5-1-1990

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN
&
HON'BLE SHRI A.V.HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.106/87

P.K.Vijayan - Applicant

v.

1. Union of India represented by Secretary to Government, Ministry of Agricultural and Co-operation, Department of Agri. and Rural Development, Krishi Bhavan, New Delhi-110 001.
2. The Director, Fishing Survey of India, Bottanala Chambers, Sir Phirosha Mehta Road, Bombay-400 001.
3. P.Narayanan, Skipper, C/o Fishery Survey of India, No.14, Lotus Ramaswami Street, Royapuram, Madras-13.
4. Antony Nayagam, C/o Fishery Survey of India, Sassen Dock, Colaba, Bombay-5.
5. P.Madanan, Mate Gr.I, C/o Fishery Survey of India, Hotel Palace Building, Marma Goa Port Trust, Marma Goa, Goa.

- Respondents

M/s Sukumaran & Usha - Counsel of the applicant

Mr PV Madhavan Nambiar, SCGSC - Counsel of the respondents 1,2&5

O R D E R

(SHRI A.V.HARIDASAN, JUDICIAL MEMBER)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant has

prayed that the date of regular promotion of the applicant as Skipper shown in Annexure-J order as 28.12.1983 may be declared to be incorrect and the proceedings dated 31.12.1985 of the second respondent at Annexure-L may be set aside to the extent it has reverted the applicant from the post of Skipper. The facts of the case as stated in the application are briefly as follows:

2. The applicant was appointed as Bosun on 17.5.1968. In August 1969 he passed the Skippers Examination. When the Union Public Service Commission issued an advertisement on 19.6.1971 inviting applications for 9 posts of Skippers under the respondents, the applicant who was fully qualified also submitted his application through proper channel. But the Deputy Director of Fisheries returned the application with a memo dated 17.8.1971 informing the applicant that it was decided not to forward applications of departmental candidates, since they had a fair chance of absorption as Skippers in the department on the basis of ~~the~~ seniority. The Government of India had issued instructions to the Superintending Engineer, Deep Sea Fishing Station, Bombay, the Director, Indo-Norwegian Project, Ernakulam and the Director, Central Institute of Fisheries Operatives, Ernakulam with a copy to the General Secretary, Central Government Fishing Seamen's Assosication, Panayappally, Cochin

wherein it was specifically stated that higher posts in the cadre of floating staff would be filled by promotion and the ^w of qualified candidates. / direct recruitment would be resorted to only when the qualified staff from the cadre are not available. The offices to whom the instructions were ^{were} issued ~~directed~~ to take necessary action in the above lines. So the applicant was resting assured that he would be regularly absorbed in the post of Skipper in accordance with his seniority. But when he came to know in April 1972 that persons were appointed by ~~the~~ direct recruitment, he made a representation. Immediately thereafter on 15.5.1972, he was promoted as a Skipper on an ad hoc basis. Pursuant to that order, the applicant had been working as a Skipper till December 1985. Though the UPSC had called for applications for recruitment as Skipper in the circumstances explained above, the applicant did not submit any application. When the seniority list of the ~~XXXXXX~~ Floating Staff as on 1.2.1974 was published, the applicant was informed by the second respondent on 30.4.1976 by Annexure-H letter that the question of regularisation of promotion of Skippers including that of the applicant was being considered in the light of the revised Recruitment Rules. As per the ~~Recruitment~~ Rules as amended by ^w order dated 27.5.1976, the post of Skippers has to be filled by promotion from Mate Gr.II with 5 years

regular service in the grade and Bosuns(certified) with 8 years service in the grade considered together failing which by direct recruitment. On this basis the applicant was qualified to be regularised in the post of Skipper with effect from 17.5.1976. As he was not regularised, he filed O.P. No.1773/79 before the Hon'ble High Court of Karnataka but during the pendency of the OP, the second respondent issued Annexure-I order dated 13.2.1984 promoting the applicant regularly as Skipper with effect from 28.12.1983. Since the applicant had already been promoted ~~was~~ and what remained~~only~~ a question of seniority, he withdrew the O.P. with the permission of the Court. He also made a representation for giving him earlier date of promotion as Skipper. But in the seniority list as on 1.1.1984 it was found that he was placed as rank No.23 ~~as Skipper~~ with effect from 28.12.1983. The applicant made a representation against the seniority list. As there was no response, he made further representations also. It was at this juncture that Annexure-L order dated 31.12.1985 of the second respondent reverting the applicant from the post of Skipper to the post of Mate Grade-I was issued. Against this order, the applicant made a representation on 6.1.1986. Finding no response, he sent a reminder on 22.1.1986 which was followed by further representations dated 12.2.1986, 26.3.1986, 5.5.1986 and 29.9.1986.

Finding that there is absolutely no response for all these representations, the applicant has filed this application for the relief of having his date of regular promotion as Skipper shown as 23.12.83 and rank No. 23 [✓] as on 1.1.1984 (Annexure-3) declared as incorrect and also for setting aside the Annexure-L order to the extent it has reverted him from the post of Skipper. It has been averred in the application that the action of the respondents in reverting him from the post of Skipper which he was holding from 21.6.1972 onwards while allowing others who joined later to continue is arbitrary and discriminatory and violative of his fundamental rights under Article 14 and 16 of the Constitution of India.

3. Respondents 3 to 5 who would be affected in case the applicant's claim for promotion to the post of Skipper on the date claimed by him is allowed has been subsequently impleaded. Though notices were served on them, they remained absent. Respondents 1&2 have filed a reply statement. The material contentions raised as follows: The application submitted by the applicant to be forwarded to the U.P.S.C. was returned by the department stating that departmental candidates who have chances of absorption as Skippers who were either working as Skipper or having fair chances of absorption as Skipper by virtue of their seniority need not be made to contest with direct recruit^s. This was done thinking that such persons could be absorbed on the basis of recommendations of the

D.P.C. But according to the then prevailing Recruitment Rules, the post of Skipper was to be filled up by promotion from Mate Grade II with 5 years regular service in that grade and Bosun with 8 years service in that grade. As the applicant did not fulfil these conditions he could not be promoted on a regular basis. In the meanwhile, the first candidate selected by the U.P.S.C. was appointed on a regular basis as Skipper as on 17.4.1972. The applicant was promoted as a Skipper on ad hoc basis on 21.6.1972. The DPC which met on 28/2.1983 recommended the applicant's promotion to the post of Skipper on a regular basis with effect from that date. Taking his date of promotion as Skipper as on 28.12.1983 in the seniority list of floating staff as on 1.1.1984, the applicant was 23rd in rank and was the juniormost. Due to decommissioning of some vessels, the posts attached to vessels had to be abolished. As a consequence the applicant who was the juniormost Skipper had to be reverted as Mate Grade-II. Since the applicant was promoted only on ad hoc basis in 1972, there was nothing preventing him from applying for the post of Skipper to the U.P.S.C. when vacancies arose in the year 1973. His failure to apply cannot in any way be related to the reasons given in 1971 for not forwarding his application. Even though the applicant had been working on an ad hoc basis as Skipper from 21.6.1972 as he did not satisfy the conditions for promotion, his promotion could not be regularised.

The regularisation of the promotion of the applicant happened to be delayed till 28.12.1983 because for administrative reasons, the D.P.C. could meet only in the year 1983. Therefore his promotion can be regularised only with effect from that date. The claim for an earlier date has absolutely no basis. As the applicant has been reverted only for want of vacancy, he is not entitled to any relief and therefore the application has to be dismissed.

4. The applicant has filed a rejoinder. It has been contended that the administrative delay in constituting the D.P.C. should not be a ground to refuse the applicant his due seniority and that since the applicant became fully qualified in 1976 to be appointed as Skipper on a regular basis, he should have been regularly appointed to the first vacancy which arose after 31.3.1976 and the promotees thereafter should have been given place only below him because as per the recruitment rules, the mode of filling up the vacancies is by promotion and failing which only by direct recruitment. The respondents 1&2 have filed an additional reply statement reiterating the contentions raised in the first reply statement and controverting the averments made in the rejoinder.

5. We have heard the arguments of the learned counsel on either side and have also gone through the records very carefully. It is an admitted fact that the applicant has

been officiating as a Skipper from May 1972 till December 1985. It is also an admitted fact that in the year 1971 when he was fully qualified for direct recruitment as a Skipper, the applicant submitted an application in response to the advertisement issued by the U.P.S.C. through proper channel and that this application was returned to him by the respondents on the ground that he had fairly good chance of being absorbed as a Skipper as a departmental ^{for ~} candidate and that/that reason it was not necessary to forward his application. Thereafter the applicant was not promoted as Skipper. The reason stated by the department is that to do so, required amendment of the ~~Recruitment Rules~~ which took some time. Had the application of the applicant to the UPSC for direct recruitment been forwarded in 1971, the applicant would have had chance of being considered for direct recruitment as a Skipper since he had the requisite qualification. He lost his chance because the department did not forward his application. When the applicant protested against the appointment of a candidate through UPSC, on 1.5.1972 he was promoted as a Skipper on an ad hoc basis by Annexure-G order dated 15.5.1972. Thereafter no step was taken by the department to regularise his promotion. Even according to the unamended ~~Recruitment Rules~~, the applicant became eligible for promotion as a Skipper in the year 1976 because by then he had served as a Bosun

for 8 years and he also had a Skippers certificate.

Inspite of the fact that the applicant had been officiating as a Skipper from 1972 onwards, the department took no action to convene D.P.C. or to promote the applicant regularly. The mode of recruitment to the post of Skipper in terms of Recruitment Rules is by promotion from Mate Grade-II with 5 years regular service in the grade and Bosun with 8 years service in the grade being considered together failing which by direct recruitment. So when vacancies arose after 1976, the respondents should have restored to direct recruitment only if no suitable hand was available to be promoted. But the seniority list produced in this case show that the department ~~has~~ failed to promote eligible candidates and ~~has~~ resorted to direct recruitment which is against the instructions issued by the Government of India in the order dated 15.6.1971 (Annexure-E). The reasons stated for not regularising the applicant till 28.12.1983 is that the DPC could be convened only on that date and not that he was not eligible earlier. That is not a justifiable reason for not regularising a person who was qualified in 1976 to be regularly appointed as a Skipper and who has been officiating as a Skipper from the year 1972 onwards. The recruitment after 1976 without taking steps to promote the applicant is violative of the ~~Recruitment~~ Rules. Therefore the claim of the applicant that he should be placed at least above respondents L upheld. All these

3 to 5 has to be [✓]

placed at least above respondents L upheld. All these

3 persons ~~who~~ started their career as Bosun only much later than the applicant. Their officiation as a Skipper started on ~~the~~ ^{the} ~~also~~ ^{the} later dates. The reason for giving them higher rank is that they were recruited directly while serving as Bosun. The applicant also could have been recruited directly had his application been forwarded in time. Since his application was not forwarded it is too much to blame ~~that~~ ^{him} he did not submit application during the succeeding years to the UPSC when vacancies arose. For these reasons we have to uphold the case of the applicant that he has to be considered senior to respondent 3 to 5. We are of the view that the applicant should be given seniority above the third respondent and assigned ~~the~~ ^{the} date of regular promotion as on 12.11.1979 as the third respondent. Therefore since the applicant is not the juniormost Skipper his reversion under Annexure-L order has to be set aside.

6. For the reasons mentioned in the foregoing paragraph we find that the applicant is entitled to be placed above the respondents 3 to 5 in the seniority list of Skippers and therefore we declare that the date of the regular appointment of the applicant as Skipper shown as 28.12.1983 is ~~erroneous~~, that he should be deemed to have

been regularly promoted as a Skipper on 12.11.1979 and that his place in the seniority list is above the third respondent herein. We therefore hold that the reversion of the applicant from the post of Skipper on the ground that he is the juniormost among the Skippers is unsustainable and therefore set aside the reversion. We direct the respondents to repost the applicant as Skipper with all consequential benefits. The action on the above lines should be completed within two months from today.

7. There will be no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

5-1-1990

trs