

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 108/89
TxXXXNo.

109

DATE OF DECISION 11.2.91

P.Muraleedharan and 5 others Applicant (s)

M/s.M.V.Joseph & Varghese Myloth Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
the Secretary to the Ministry
of Defence, New Delhi and 4 others

Mr.S.V.Balakrishna Iyer,ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. N.Dharmadan , Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 8th February 1989 the six applicants of whom three have been working as Progress Recorder and three as Recorder II in the Naval Ship Repair Yard, Naval Base, Cochin under the Southern Naval Command have prayed that the impugned order dated 30th December 1988 proposing to get the post of Senior Progress Recorders Progress Recorder Gr.I and Progress Recorder Gr.II filled up by technical staff instead of ministerial and to amend the sanction and ^{the} Recruitment Rules accordingly, should be set aside. They have also prayed that respondents 2 and 3 should be directed not to redesignate and revert the applicants from the post of Progress Recorders to the post of Lower Division Clerks. The 3rd prayer of the applicants that the respondents 2 and 3 be directed to conduct departmental tests for promotion to the post of Progress Recorder Gr.I and appoint the eligible candidates in accordance with the Recruitment/Promotion Rules in force was not admitted in the present application but liberty was given to the applicants to move separate applications in accordance with law seeking this relief. The brief facts of the case are as follows.

2. Applicants 1 to 3 were initially appointed as Lower Division Clerks on casual basis between July 1975 and January 1976 in spells of less than three months with intermittent breaks till 4th October 1978. As they were about to be declared as surplus and as they had volunteered to be appointed as Progress Recorders on giving an undertaking that they would not opt for promotion in the cadre of LDC, they were appointed as Progress Recorders from 5th October 1978(Annexure R1). They were declared as permanent in the post of Progress Recorder with effect from 1st April 1982 and 1st April 1983 (Annexure-B). Applicants 4 to 6 were appointed as Recorder II between 28.10.81 and 1.3.83. The ^{posts of} Progress Recorder and Recorder Gr.II are similar for all purposes and they carry the same scale of pay as that of an LDC. The applicants claim that the next promotion post for Progress Recorder/Recorder Gr.II is to the post of either Recorder Gr.I or Operator Ancillaries. The post of Recorder Gr.I, according to the applicants, is equivalent to Operator Ancillaries and accordingly the Recruitment Rules applicable to Operator Ancillaries would be automatically applicable to the post of Progress Recorder Gr.I as at Annexure-D. It appears that in August 1986 additional posts as part of the stabilised cadre of the Indian Navy and civilian component were sanctioned(Annexure-E)operative for a period of three years in the first instance. Amongst the 220 posts so sanctioned, one post of Senior Recorder, two posts of Recorder I were also sanctioned. The applicants grievance is that whereas all the remaining additional posts have been filled up, these posts to which the applicants have been looking forward for promotion were not filled up nor was any departmental test required for promotion held. These posts could not be filled up because the Southern Naval Command in September 1986(Annexure-K) recommended to the Chief of Naval Staff that the sanction of the posts of Senior Recorders may be amended to that of Senior Chargemen,Recorder Gr.I to that of U.D.C and Recorder Gr.II to that of L.D.C. Applicants 2 and 3 represented to the 3rd respondent for conducting departmental tests. The representations were forwarded by the superior officer to the Southern Naval Command recommending the holding of the departmental examination on the ground that the Southern Command's proposal to redesignate the posts of Progress Recorders as L.D Clerks had not been accepted by the Naval Headquarters. A reply was received (Annexure-G) stating that the proposal to amend the sanction

of the posts of Progress Recorder/Recorder was under consideration of the Naval Headquarters. The first applicant represented(Annexure-H)to the Director of Grievances, Southern Naval Command in July 1988 praying that the unfilled posts of Recorder Gr.I/Senior Recorder should be filled to provide them with avenues of promotion. A reply was given to him (Annexure-I) stating that since the draft Recruitment/Promotion Rules for the posts are pending approval of the Naval Headquarters, the question of promotion of Progress Recorders would be considered only after finalisation of Recruitment/Promotion Rules. The applicants grievance is that the proposal to redesignate the posts of Senior Recorder, Recorder Gr.I and Recorder Gr.II was made without giving them an opportunity of being heard and the impugned order at Annexure-L proposing to make the posts of Senior Progress Recorder, Progress Recorder Gr.I and Progress Recorder Gr.II tenable by technical persons and to merge the existing staff like the applicants with the ministerial staff is unfair. Their stand is that the posts of Progress Recorder Gr.I to which they are entitled to be promoted are governed by the Recruitment Rules for Electronic Data Processing Centre(EDPC)staff as at Annexure-D and therefore, the respondents cannot take the stand that no Recruitment Rules have been promulgated for these posts. Their fear is that after the expiry of three years for which the additional posts were sanctioned the posts of Senior Recorders and Progress Recorders Gr.I will lapse and their chances of promotion will be permanently lost. They have also challenged the proposal to get the posts manned by Tradesmen as in Bombay and Vishakapatnam on the ground that at the time of sanction of the posts, such a consideration was never in view. By inordinately delaying decisions on their representations, the respondents are denying the applicants their legitimate dues.

3. The respondents have stated that the applicants 1 to 3 came over as Progress Recorders on becoming surplus (Ext.R1) as L.D.C. They were accommodated in the three additional posts of Progress Recorders on a casual basis and were regularised on their opting to join the PPC section. The respondents have repeatedly clarified that for the additional posts of one Senior Progress Recorder, two Recorders Gr.I and three Recorders Gr.II no Recruitment/Promotion Rules were in existence. However the qualifications provisionally prescribed earlier for Progress Recorders

were made applicable to Recorder Gr.II and applicants 4 to 6 were absorbed against the newly created posts from 24th October, 1976. The respondents have firmly denied that the next promotion of Progress Recorders and Recorder Gr.II is to be post of Recorder Gr.I or Operator Ancillaries. For the posts of Progress Recorders various alternatives are being examined for framing the Recruitment Rules. They have indicated that the Recruitment/Promotion Rules for the posts of Operator Ancillaries and Progress Recorders as at Annexure-D were examined for their adoption for the posts of Senior Progress Recorder, Progress Recorder Gr.I and Progress Recorder Gr.II, but it was found that "there is vast difference in the skill and technical know-how between Electronic Data Processing Supervisors/Operator Ancillaries and Senior Progress Recorder/Recorder and therefore this proposal was dropped". They have firmly stated that the ^(Annex D) Recruitment Rules applicable to the Electronic Data Processing Centre staff were not applicable to the Senior Progress Recorders/Recorders Gr.I sanctioned to the Naval Ship Repair Yard, Cochin. Therefore, the trade test etc. prescribed in the said rule is not applicable to the applicants. They have also clarified that in the Naval Dock Yard, Bombay and Vishakhapatnam Progress Recorders are Tradesmen who are technically qualified. The respondents have stated that the posts of Senior Recorders/Recorders I and II sanctioned for the PPC section are to meet requirements in the Naval Ship Repair Yard which are entirely technical, involving knowledge in mechanical, electrical and electronic disciplines. If the posts of Senior Recorder/Recorder Gr.I are filled up ^{by promotion}, the applicants who are ministerial, the job requirements will not be fulfilled. The whole question is under consideration and the applicants can have no grievance at this stage when no decision has been taken. The respondents have fairly averred that in case the posts of Progress Recorders are decided to be manned by technically qualified persons, the department will make an effort ^(through) to provide them with alternative employment commensurate with their educational qualifications. They have argued that creation of new posts in Government departments and prescribing necessary qualifications is solely governed by exigencies of service. They have also indicated that as and

when the Recruitment Rules are framed, the question of providing promotional avenues will also be kept in view. They have stated that the applicants should not be unduly perturbed by the expiry of three years ^{valid} for the sanction of the additional posts as the sanction will be extended based on the exigency of service.

4. In the rejoinder the applicants insist that the Recruitment Rules for EDPC staff at Annexure-D are applicable to the posts of Senior Recorders/Recorders Gr.I etc. They are also denying the fact that they were accommodated as Progress Recorders on being surplus as L.D.C. They have referred to Annexure-C in which the post of Progress Recorder Gr.I has been stated to be equivalent to Operator Ancillaries stating that Annexure-C is a clarification and not a proposal. They have also challenged the statement of the respondents that the work of Dock Yards at Bombay and Vishakhapatnam are different from that at Base Repair Organisation Cochin. It is also stated by them that applicants 4 and 6 are also handling three Computers introduced in the Naval Ship Repair Yard, Cochin. They have also referred to the communication at Annexure-N dated 7th October 1988 indicating that an EDP centre was formed in ^{the} Naval Ship Repair Yard, Cochin with immediate effect to show that the Progress Recorders at Cochin are doing the jobs of EDPC staff. They have argued that the applicants are fully competent to do the technical work of costing and their work as Progress Recorders has never been found unsatisfactory.

5. In the additional counter the respondents have stated that over the years the job in the PPC section of the Naval Ship Repair Yard was felt to be better performed by technically qualified personnel. The job requirements of EDPC staff and Progress Recorders are entirely different and therefore, the Recruitment/Promotion Rules at Annexure-D are not applicable to Progress Recorders. The applicants were absorbed as Progress Recorders on a casual basis without waiting for the finalisation of the Recruitment Rules. They have clarified that Annexure-C in which it was stated that Progress Recorders Gr.I is equivalent to Operator

Ancillaries is only a suggestion by a lower formation and not a clarification. The applicants are not competent to decide the applicability of Annexure-D Recruitment Rules to them. They have further stated that the draft Recruitment Rules for the Progress Recorder Gr.I at Annexure R-2 in which promotion of Progress Recorders Gr.II was also proposed were examined but dropped. The post of Progress Recorders was proposed to carry out the duties of typing and general correspondence which was earlier carried out by LD Clerk. But, on further examination it was found that the staff sanctioned cannot meet the requirement of the Ship Repair Yard being of technical nature. Therefore, it was decided to amend the Government sanction for Progress Recorder/Recorder Gr.I/Senior Progress Recorder to technical grades. From the experience gained it was felt that Progress Recorders with qualification of SSLC and typewriting are not suitable for the job requirement which involved technical know-how. The applicants have no technical qualification. Referring to Annexure-N produced by the applicants, the respondents have indicated that the EDP cell at Cochin is also manned by technical persons who only are given training in EDP centre. It is, therefore, evident that the Progress Recorders in the Ship Repair Yards are not doing the jobs of EDP staff. They are performing the clerical duties of PPC only. The applicants are not doing any costing work which is done by the technical personnel.

6. In the additional rejoinder filed by the applicants they have indicated their surprise that Recruitment Rules for Progress Recorder Gr.I have not been finalised even after the lapse of 11 years.

7. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The important question to be decided in this case is whether for the posts of Senior Recorder/Progress Recorder Gr.I, the Recruitment Rules applicable to Electronic Data Processing Centre staff at Annexure-D can be applied. The respondents who are the authority to identify, suggest, frame or modify the Recruitment Rules or assist the competent authority in doing so have specifically indicated that the Recruitment Rules applicable to EDPC staff at Annexure-D are not at all applicable to the newly created

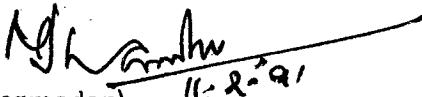
posts of Progress Recorders Gr.I or Senior Recorders in the Ship Repair Yard at Cochin. The applicants have relied upon an observation made by the Officer Incharge , Base Repair Organisation, Cochin addressed to the Flag Officer Commanding-in Chief , Southern Naval Command at Annexure-C in which it was stated that "the post of Progress Recorder grade I is equivalent to Operator Ancillaries, Recruitment/Promotion rules for which post have been promulgated in SRO 207 dated 21 Jul 89". Firstly, the Officer Incharge has only stated that the post of Progress Recorder is 'equivalent' but not identical with the post of Operator Ancillaries. Secondly, the letter is addressed to his superior, i.e, the Flag Officer Commanding-in Chief, Southern Naval Command and this can only be taken as a suggestion and not as a decision or direction. The concerned authorities have unequivocally stated that no Recruitment Rules have been framed for the posts of Senior Recorder and Progress Recorder Gr.I. This is supported by the communication dated 13th March 1985 at Ext. R2 where it is stated that "no Recruitment Rules presently exists" for the posts of Senior Recorder, Progress Recorder Gr.I and Progress Recorder Gr.II in the Base Repair Organisation at Cochin and also draft Recruitment Rules were forwarded to the Chief of Naval Staff. The first applicant was also informed at Annexure I dated 10th October 1988 that "the draft Recruitment/Promotion Rules in respect of Progress Recorder Gr.I and Senior Progress Recorder have been forwarded to the Naval Headquarters for approval" . The applicants, therefore, at this stage, cannot insist that the Recruitment Rules applicable to Operator Ancillaries of Electronic Data Processing Centre would automatically apply to the posts of Progress Recorder Gr.I. The respondents' case is that the post of Senior Recorder/ Progress Recorder Gr.I involve technical knowledge on mechanical, electrical and electronic nature and their past experience is that ministerial staff like the applicants if promoted as Senior Recorder/Progress Recorder Gr.I will not be able to discharge the duties properly. Even in the Electronic Data Processing Unit established at Cochin only the technical hands

F2

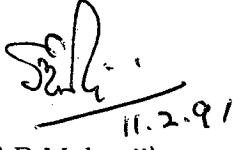
are employed to handle the computers and the technical work of the EDP cell and the applicants as Progress Recorders are not doing the jobs of EDPC staff. The respondents have fairly stated that if in the public interest and exigencies of service the Recruitment Rules when finalised for the posts of Senior Recorder/Progress Recorder Gr.I do not provide for the promotion of the applicants, their promotion will be provided for in other avenues. We agree with the respondents that manning of posts are primarily for meeting the job requirements and not for providing avenues of promotion to the feeder category. It has been held by the Supreme Court in State of Andhra Pradesh vs. Sadanandam,(1989)11 ATC 391 that the mode and source of recruitment is exclusively in the domain of the executive and judicial bodies should not intervene in the policy of recruitment. Still in another case, viz., J.Rangaswamy v. Government of Andhra Pradesh, 1990 Lab. I.C.296, the Supreme Court held that the Courts are not to consider or assess the relevancy and suitability of qualifications. The Principal Bench of this Tribunal in Tarip Singh and others v. Union of India and others, (1989)9 ATC 772, has held that Recruitment Rules cannot be ~~held~~ to be void on the ground that they do not provide for promotion.

8. In the background of the aforesaid rulings and considering that the Recruitment Rules applicable to the EDPC staff are not applicable to the applicants in the PPC and to the posts of Senior Recorder and Progress Recorder Gr.I, we are extremely hesitant to specify the qualifications, modes and source of Recruitment for these posts in the Recruitment Rules yet to be finalised. We are reassured by the statement made by the respondents in the counter affidavit that efforts will be made to provide alternative employment to the applicants and the question of protecting the interest of the applicants will be taken into account as and when a final decision is taken to decategorise the posts of Senior Recorder/Progress Recorder Gr.I. We agree with the respondents that in filling up the posts, the job requirements cannot be compromised. However, we hope that in the Recruitment Rules and while filling up

the posts of Senior Recorders/Progress Recorder Gr.I the experience of the applicants as Progress Recorder will not be completely overlooked. In B.N.Saxena v. New Delhi Municipal Committee and others, 1990 SCC L&S 588, the Supreme Court held that in certain circumstances educational qualifications should not be insisted upon in consideration of long experience of certain incumbents. As to the manner and circumstances in which the experience of the applicants would be taken into account for adjusting them in suitable posts or providing them with some reasonable avenues of promotion not excluding the posts of Senior Recorder/Progress Recorder Gr.I, we leave it entirely to the administrative wisdom of the respondents. It is also hoped that the Recruitment Rules for these posts at Cochin will be finalised without any further delay so as to end the state of suspense and uncertainty to which the applicants have been subjected for about a decade with not a very happy effect on their morale. The application is accordingly dismissed with no order as to costs.


(N.Dharmadan)
Judicial Member

11-2-91


(S.P.Mukerji)
Vice Chairman

n.j.j