

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No.  
~~XXXXXX~~

189 of 1991

DATE OF DECISION 28.2.1992

M.K.Kuttikrishnan Nair Applicant (s)

Mr.P.V.Mohanan

Advocate for the Applicant (s)

Versus

Director, Central Institute of Fisheries Technology, Respondent (s)  
and three others.

Mr.PV Madhavan Nambiar

Advocate for the Respondent (s)

CORAM : for R.1&2  
Mr.Roy Thomas-for R.3&4.

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

and

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

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

In this application dated 18th January, 1991 filed under Section 19 of the Administrative Tribunals Act the applicant who has been working as Field Assistant in the Central Institute of Fisheries Technology (CIFT) under the Indian Council of Agriculture Research has challenged the impugned order dated 8.11.90 at Annexure-I by which he was informed that on the directions dated 27.4.89 of the Central Administrative Tribunal, the Departmental Promotion Committee considered his case but did not recommend him for promotion to Grade T-II-3. He has further prayed that the respondents be directed to promote him to T-II-3 grade with effect from 20.7.80 with all consequential benefits including arrears of pay and allowances with effect from 27.4.89 (the date of Judgment of the Tribunal) and to consider his claim for further promotion deeming to have <sup>him</sup> <sub>6</sub>

been promoted to T-II-3 with effect from 20.7.80.

2. The brief facts of the case are as follows.

The applicant who had been working as Sr. Field Assistant (Technical Grade-II) in the CIFT moved the High Court of Kerala in Writ Petition dated 6.12.88 challenging the decision of the respondents to consider him to be ineligible for promotion to T-II-3 post. The Writ Petition was transferred to the Tribunal and decided as T.A.K.593/87 by the Judgment dated 27.4.89 (Annexure-II) to which one of us (S.P.Mukerji, Vice Chairman) was a party. The operative portion of the Judgment reads as follows:

"In the light of the analysis given above, we allow the petition to the extent of directing the respondents to deem the petitioner to be eligible for promotion to T.II-3 category of posts with effect from 20th July, 1980 and to consider him for such promotion with effect from the dates his juniors were so considered and to promote him notionally with effect from the date he is found fit for such promotion with consequential benefits of increments from the date of his notional promotion without arrears of pay and allowances but with the benefit of seniority and further promotion. The respondents are directed to complete action on the above lines within a period of three months from the date of communication of this order."

The respondents moved a Special Leave Petition before the Hon'ble Supreme Court against the aforesaid Judgment but the SLP was dismissed. Accordingly the case of promotion of the applicant was referred to the DPC which considered his case but did not recommend him for promotion and this decision was communicated vide the impugned order at Annexure-I. According to the applicant the rejection of his case by the DPC is arbitrary and malafide. No departmental proceedings have ever been initiated against the applicant nor has any adverse entry been <sup>ever</sup> communicated to him. The

applicant's performance was assessed in 1986 and he was found fit for two advance increments and on the recommendation of another D.P.C. he was permitted to cross the efficiency bar in that year and he was also confirmed as Sr. Field Assistant Grade T-II retrospectively from 1.1.83 by the Office Order dated 30.8.86. The applicant's contention is that he has been the office bearer of the CIIFT Employees Federation for the last 12 years and was also the Vice Chairman of the National Federation of the ICAR Employees and has been exposing the grievances of the employees before the various fora. As Secretary of the Federation he had filed a Writ Petition before the High Court of Kerala to ventilate the grievances of the employees in connection with the appointment of a Driver. When <sup>the order obtained in that case</sup> was wrongly implemented he moved the Tribunal to get the employees' rights. He filed another O.A.384/89 for drawal of allowances on advance increments which was allowed. All these cases were strongly resisted by the first respondent i.e., Director, CIIFT who was the Chairman of the DPC which rejected him for promotion. In regard to another member of the DPC Shri Balachandran who is respondent No.4 in the application, the applicant stated that he had complained against him to the Director in connection with obtaining a telephone connection <sup>at</sup> government cost. Against another member of the DPC Shri Gopakumar who is respondent No.3, the applicant states that <sup>the</sup> <sup>applicant</sup> had criticized serious irregularities committed by him in the matter of allotment of quarters. Accordingly his case of promotion was killed by the aforesaid DPC out of malice.

3. The first two respondents have gone into the merits of the applicant's eligibility for promotion which we need not recount here as the same have been already decided by the Judgment of this Tribunal at Annexure-II. They have denied that Shri Balachandran (Respondent No.4) had obtained a telephone connection wrongly. He was given additional charge of Senior Administrative Officer on 18.9.89 in which capacity he was allotted the residential telephone. He was also nominated as Security Officer and no favour was shown to him in the allotment of telephone. They have denied that there was any communication from the applicant or any office bearer of the Federation to the Director in regard to any irregularity in telephone connection. They have stated that since the applicant was not recommended by the D.P.C. for promotion as on 20.7.80 and the promotion rules were amended from 7.4.81 he will have to wait till he is promoted to the grade of <sup>fulltime</sup> T-I-3 and his turn come for promotion to T-II-3.

4. Shri Gopakumar, Respondent No.3 has denied that on 6.11.90 he had walked out of a meeting of the Joint Consultative Machinery having been provoked by the applicant. In any case even if that had happened that would/have influenced the decision of the D.P.C. which met earlier on 26.9.90. He has further clarified that allotment of quarters is made by a committee of six members of which he is the Chairman. He has denied any irregularity committed by him in <sup>the</sup> allotment of quarters.

5. Shri Balachandran (Respondent No.4) stated that on the basis of the pay drawn by him he was entitled

to a residential telephone and the telephone was installed at his residence on 5.9.90 after he had taken over as Senior Administrative Officer and had been nominated as Security Officer.

6. In the rejoinder the applicant has conceded that the 4th respondent was ordered to look after the current duties of Senior Administrative Officer but states that Rs.8,000/- was deposited with the Telephone authorities for his residential telephone. He has alleged that the 4th respondent relinquished <sup>the</sup> charge of Senior Administrative Officer on 6.10.90 and states that he ~~was~~ was allowed to retain the telephone as Security Officer on a special favour shown to him. His argument is that the question of residential telephone had been discussed on 6.6.90 and the 4th respondent was prejudiced against him in the meeting of the DPC held on 26.9.90.

7. We have heard the arguments of the learned counsel for all the parties and gone through the documents carefully. The respondents 1&2 were good enough to show us the proceedings of the DPC chaired by Respondent No.1, which met on 26.9.90. Respondents 3&4 were two of the five other members on the Committee. The Committee found that till 20.7.80 when according to the Judgment of the Tribunal the applicant became eligible, no technical staff junior to the applicant had been promoted. The Committee assessed the performance of the applicant and gave their recommendations in ~~the~~ following terms:

"Between 20.7.1980 (when he became eligible for consideration for promotion), and 6.4.1981 (when the recruitment rule was amended) he had availed 230 days of leave of different kinds like Earned leave, Commuted leave, Extra ordinary leave with medical certificate etc. He was on duty as TA (Sr. Field Assistant) just for 31 days

inclusive of holidays upto 6.4.1981. From a perusal of the CCRs for the year 1980 when he was holding the position of T-2 it is seen that all his attributes except physical capacity for duty and integrity have been recorded as only average.

As he has attended the duties of T2 post only for a small period of 98 days within the period 8.5.1980 (his date of appointment as T2) and to 7.4.1981 (when the Recruitment Rules were amended by which he became not eligible for consideration), and as his attributes during the period were only average the Committee does not recommend Shri M.K.Kuttykrishnan Nair, T2 to be fit for promotion to the post of T-II-3."

From the above it is clear that in assessing the applicant's performance for promotion, his performance only after he became eligible on 20.7.80 and that also for less than one year was taken into account. This to our mind is absolutely unwarranted. The applicant became eligible for promotion on 20.7.80. Accordingly his performance for three ~~to~~ <sup>or more</sup> five years prior to 20.7.80 should have been taken into account and not for the period following 20.7.80 till 6.4.81. He was rejected because during these few months he was mostly on leave and his performance was found to be average. To assure ourselves whether he has suffered because of such a limited assessment, we went through the applicant's C.R.Dossiers and found that he was assessed by his superiors as follows:

1974	.. Intelligent, keen, industrious, good in 6 items, satisfactory in one, fair in another. Over all assessment Satisfactory. The Reviewing Officer assessed him as 'Good'.
1975	.. The Reporting Officer found him to be intelligent, amenable to discipline, honest, punctual, devoted and deserving promotion. The Reviewing Officer agreed.
1976	.. Reporting Officer found him <sup>to be</sup> punctual, amenable to discipline and honest, The Reviewing Officer agreed.

1977 .. The Reporting Officer found him to be very quick in disposal, good in noting and discussions, very intelligent, friendly to others, punctual, disciplined, reliable and trust-worthy. The Reviewing Officer found him to be responsible, eager to prompt disposal of work.

1978 .. The Reporting Officer found him to be industrious, dutiful, very good in documentation, good in noting and drafting, punctual, honest. The Reviewing Officer agreed.

1979 .. The Reporting Officer found him to be intelligent, good in proficiency in his work, hard working, willing to shoulder responsibility, amenable to discipline, punctual and honest. The Reviewing Officer assessed him to be good and willing worker.

1980 .. He was on leave for 140 days. The Reporting Officer found him to be generally average.

1981 .. He was on leave for 185 days. His performance was found to be satisfactory and very good in 9 and average in one respect.

From the above analysis it is clear that the applicant had been assessed as good, intelligent, punctual, disciplined, devoted, willing to take responsibilities between 1974 and 1979 and generally very good during 1981. The assessment during 1980 stands out as an ~~oddity~~ when he was adjudged to be average. In this light we are convinced that by confining their assessment only to the year 1980 and ignoring the previous ~~cross checking with~~ entries and the entry of 1981 the case of the applicant has been effected adversely.

8. In the facts and circumstances, we allow the application to the extent of directing the respondents to convene a meeting of the Review Committee and get the performance of the applicant assessed for promotion to T-II-3 between ~~27.5.80~~ <sup>20.7.80</sup> and 6.4.81 by <sup>at least</sup> considering his C.R. of 5 years from 1976 onwards till 1980.

Corrected vide our  
order dated 30.4.92  
on MP 565/92  
30.4.92

We also direct that in order to instill confidence in the mind of the applicant, the respondents 3&4 ie., Dr. Gopakumar and Shri Balachandran should be replaced in the DPC by two other Scientists of equal or higher status. We make it clear that this should not in any manner be construed to be accepting the applicant's allegation of any one of these two Scientists working with malafides or animosity against the applicant. We are directing this only to ensure that justice should not only be done but appear to have been done. The application is disposed of on the above lines. There will be no order as to costs.

*(Signature)*  
28.2.92

(A.V. HARIDASAN)  
JUDICIAL MEMBER

*(Signature)*  
28.2.92  
(S.P. MUKERJI)  
VICE CHAIRMAN

28.2.92

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