

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 196 of 2011

Monday, this the 2nd day of April, 2012

CORAM:

Hon'ble Mr. Justice P.R Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

M.N. Ashok Kumar, aged 40 years, S/o. Narayanan,
Unskilled Worker, Fishery Survey of India,
Marine Engineering Division, Kochi-16, residing at
"Manthanattu", Manikulangara, Kakkanad,
Cochin-30.

..... **Applicant**

(By Advocate – Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by the Director
General, Fishery Survey of India, Mumbai-400 021.
2. The Zonal Director, Cochin Base of Fishery Survey
of India, Cochin-682 004.

3. The Mechanical Marine Engineer, Cochin Base of
Fishery Survey of India, Cochin-682 004.

..... **Respondents**

(By Advocate – Mr. George Joseph, ACGSC)

This application having been heard on 22.03.2012, the Tribunal on
02.04.2012 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

The applicant was recruited as unskilled worker in the Integrated Fisheries Project (IFP) in the year 1990. The applicant and some others were transferred to the Cochin base of Fishery Survey of India (FSI) along with the post including vacant posts in the year 2005. The applicant belongs

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to ST. A vacancy for SC had arisen in the cadre of Slipway Worker (SW) in the year 2001. Though the applicant is eligible and entitled for promotion, respondents have not considered the candidature of the applicant for promotion and advertised the same for direct recruitment on 4.7.2007.

Aggrieved he has filed this Original Application for the following reliefs:-

“(i) To declare that the applicant is entitled to be promoted to the vacancy of Slipway worker earmarked for reserved community or any other open vacancy with effect from the date of arisal of the vacancy in 2001;

(ii) To direct the respondents to promote the applicant as slipway worker with effect from the date of arisal of the vacancy and to grant consequential benefits of fixation of pay and seniority and other benefits on the basis of such promotion with arrears of fixation of pay etc. with 18% consequential penal interest;

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

And

(iv) To grant the costs of this Original Application.”

2. The applicant contended that the refusal of the respondents to grant him promotion in spite of having the required qualifications and availability of vacancy for the reserved candidate is illegal. A vacancy had arisen for reserved candidate in the year 2001. In spite of having a qualified candidate for promotion the respondents had issued Annexure A3 advertisement for direct recruitment which is highly arbitrary. As per Annexure A2 recruitment rules the filling up of the post of SW is by promotion failing which by direct recruitment.

3. The respondents in their reply statement submitted that upon receipt of




the representation dated 7.7.2007 (Annexure A4) from the applicant the process of recruitment to the post of SW was stopped. But on examining the matter it was found that the post of SW earmarked for ST candidate was a typographical error and that the vacancy was reserved for SC, as per letter No. A1/4-2/2007/1924, dated 30.5.2011 of Director NIFPHTT. Since the vacancy was not reserved for ST but SC, the applicant cannot claim promotion on the ground that he belongs to ST. His submission of Annexure A4 representation was right at that point of time but the same is nonest after it became clear that the post is reserved for ST. With the introduction of new pay structure with pay band and grade pay the post of SW Grade-III and the post of SW Grade-II have been merged together with grade pay of Rs. 1,800/- in the pay band of PB-I of Rs. 5200-20200/-. As a result the post of SW Grade-III ceases to exist having been re-designated as SW Grade-II. Therefore, the existing recruitment rules for the post of SW are not operative. A proposal for amendment of the recruitment rules has already been sent to the Ministry of Agriculture, Department of Animal Husbandry, Dairying & Fisheries vide letter dated 18.3.2011. Further action for filling up all the posts either by direct recruitment or by promotion will be possible only after the amended recruitment rules are notified in the Gazette of India. The applicant has been granted financial up-gradation under the ACP scheme as well as MACP scheme. As per the post based roster for promotion only the 6th point has been reached. The ST point is only at 14th point as per records. There was only one vacant SC post in the list of posts transferred to FSI from IFP and no post was earmarked for ST.



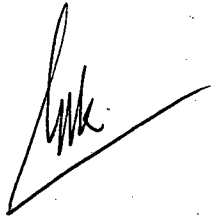
4. We have heard the learned counsel for the applicant Mr. Shafik M.A and the learned counsel for the respondents Mr. George Joseph, ACGSC and perused the records.

5. The applicant had requested for promotion to the post of SW on seeing the advertisement dated 4.7.2007 for direct recruitment in the ST quota. The respondents have admitted that his representation was right at that point of time. They have not covered themselves with glory when they went for direct recruitment without first trying out the method of promotion as per the recruitment rules and also when they wrongly mentioned the vacancy as in ST category instead of SC category. The representation of the applicant has not yet been responded to. In dealing with the promotion of the applicant, no urgency on the part of the respondents is discernible. The applicant has filed this OA on 9.3.2011. He could have done it in the year 2007 or 2008. With the implementation of the new pay structure with pay band and grade pay posts have been merged. Proposal of amendment of recruitment rules for the posts of SW Grade-II and Grade-I and unskilled worker Group-D to which the applicant belongs is already sent to the Ministry of Agriculture, Department of Animal Husbandry, Dairying & Fisheries. No posts are being filled up by the respondents pending notification of the new recruitment rules. Action for filling up all the posts will be possible only after new recruitment rules are notified. The applicant has been granted financial up-gradation under the ACP and MACP schemes. Under these circumstances we are not inclined to grant the reliefs as asked for by the applicant.



6. The applicant does not have a right to be promoted to a post reserved for SC but he can have legitimate aspirations for promotion which the respondents are bound to consider. Granting of financial up-gradation is no substitute for regular promotion. A quick glance at the roster register shows that respondents have carried forward reservation point for general category and promoted a SC candidate against a vacancy in the general category. The same could be possible in the case of the applicant also if it does not cause prejudice to anybody as and when the new recruitment rules are notified. Therefore, in the interest of justice the respondents are directed to first consider the representation of the applicant for promotion vide his letter dated 7.7.2007 and inform him of the decision thereupon by a speaking order before effecting any promotion to a post to which the applicant is eligible to be considered for promotion.

7. Original Application is disposed of as above. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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