

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 2/
~~XXXXXX~~

1990

DATE OF DECISION 26.4.91

K.K. Karunakaran Applicant (s)

M/s. GP Mohanachandran Advocate for the Applicant (s)
KR Haridasan and M. Jayachandran
Versus

Secretary, Deptt. of Space, Respondent (s)
Bangalore for Union and 3 others

Shri NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadan, 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? no
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

N. Dharmadan, Judicial Member

The Applicant is approaching this Tribunal for the second time. His earlier approach by filing O.A.73/89 was during the pendency of his representation before the second respondent, the Chairman, I.S.R.O., Bangalore. Hence, we thought it may not be proper to examine the merits of his contention for the matter was pending consideration before the second respondent. Accordingly, we disposed of the matter by judgment at Annexure-4 dated 29-9-89 without expressing any final opinion, with the following directions:

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"....Accordingly, without expressing any opinion about the contentions raised by the petitioner and the points urged by the learned counsel appearing for the respondents, we dispose of the original petition with the following directions to the second respondent before whom the representation at Ext. A-8 is pending:

- i. The second respondent shall consider and dispose of Annexure-8 representation after considering the petitioner's case of discrimination specifically pointed out in the Original petition, uninfluenced by any of the statements in the counter affidavit or the observations in Annexure-3, 5 & 7 and pass orders on the same as expeditiously as possible, at any rate within a period of two months from the date of receipt of this judgment.
- ii. The second respondent may also give an opportunity of being heard to the petitioner before passing final orders as directed above.

4. If the petitioner is aggrieved by the order passed by the second respondent on the representation at Annexure-8 he has got the freedom to take appropriate proceedings as he may think proper in this behalf....."

2. Annexure-8 representation referred to in our judgment was disposed of by the 2nd respondent by Annexure-10 order. According to the applicant the directions ^{in the judgment} were not complied with and the ^{2nd} respondent passed the order without application of mind. He has not considered Annexure A-5 written arguments submitted before him and Annexure A-6 proceedings passed in respect of similarly situated person namely K. Sivarama Krishnan who was granted the benefit of category change and designation thereof. Annexures A-7, A-8 and A-9 produced for proving his eligibility for category change were also not adverted to by the Chairman. Hence, the order is illegal.

3. The applicant passed the Diploma in Mechanical Engineering in July 1975 in second class with 56% of marks. Then he changed his field of work from Chemical wing to Mechanical wing with the consent of the Superior officers. He was put in the Mechanical Maintenance Workshop of the Mechanical Engineering Works Division even though his designation remained as Scientific Assistant. Since he was fully engaged in the Mechanical Engineering works from 1982 and qualified for the work in that branch, he requested for change of his designation from Scientific Assistant to Technical Assistant. It ought to have been granted by the respondents. He has stated all these relevant details in his representation submitted to the Chairman dated 5-1-1988 (Annexure A-9) which was ^{allegedly} recommended by the Head of Personnel and General Administration with the following note:

".....The applicant is one victim of time. His request may be considered sympathetically. We need not compell him to seek justice from High Court when we can ourselves rectify the grievance.."

4. In the light of this recommendations, according to the applicant, the second respondent ought to have granted xx change of designation prayed for by the applicant. But by Exhibit A-10 order, his representation dated 15-1-1988 was rejected without applying the mind and considering the recommendation of the Head of Personnel and General Administration.

5. The respondents have filed a detailed reply and denied all the contentions. They submitted that the applicant can sit for the departmental tests under the existing rules and get a change in the designation if he is really interested in getting the relief. They have stated that the case of M/S. Sivaramkrishnan and Shri Abraham are distinguishable.

6. We have heard the arguments of the learned counsel on both sides. The main contention urged by the learned Counsel for the applicant is that though in 1977 the request of the applicant was rejected, because the Interview Committee did not find him fit for the post of Technical Assistant 'B', for which he has applied with reference to an advertisement issued at that time, he has a right to get change of designation in the same manner as in the case of similarly situated persons viz. M/s. Sivaramkrishnan and N.J. Abraham, particularly when his request was recommended by the Head of Personnel and General Administration adverting to identical cases and stating that he is a victim and he is entitled to the relief without approaching to the Court of law. These arguments were answered by the learned counsel appearing on behalf of the respondents. According to him Annexure-A - 10 order was passed after a careful consideration of all aspects and the application is liable to be dismissed.

7. Having heard the matter at length, we have taken the view that the offer made by the second respondent, Chairman, while considering his representation, Annexure-A.9 to constitute a committee consisting of specialists in Mechanical Engineer to assess the suitability of the applicant to grant the change of designation, should have been accepted by the applicant and that the Chairman ought to have decided

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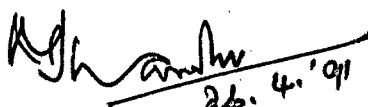
the issue and the applicants' claim on the basis of the report of such committee. But the Chairman did not adopt that course because of the reluctance of the applicant to undergo such an interview by the committee. We have asked the learned counsel for the applicant whether his client is now willing to be assessed by committee consisting of experts in Mechanical Engineering. The answer was in the affirmative. The applicant is willing to subject himself to be examined by an expert committee consisting of three experts on Mechanical Engineering. Accordingly, we passed orders on 8.4.91 directing the learned counsel for the respondents to ascertain the possibility of constituting such a Committee and report the matter on 18-4-89.


8. When the case was taken up on 18-4-89 for hearing, the learned counsel for the respondents submitted that a committee as directed in the earlier order would be constituted for assessing the suitability of the applicants for category changes after giving him sufficient notice in this regard. As indicated above the learned counsel for the applicant is also agreeable for the same. Accordingly, we are inclined to dispose of this application without deciding the issue raised for consideration.

9. In this view of the matter we feel that second respondent would not have passed Annexure-A-10 order without getting a report from the committee if the applicant indicated his willingness to appear before such committee earlier when Annexure-9 representation filed by the applicant was considered by the Chairman. Now since the applicant *Chairman* is prepared to constitute such committee the proceedings will have to be started afresh from the stage of constitution of

The Committee. Accordingly Annexure A-10 has become inoperative in the light of the fresh offer made by the second respondent and it would be fair and proper on the part of the second respondent to withdraw Annexure A-10 and constitute a committee consisting of three expert Mechanical Engineers in this behalf for the purpose indicated above. Under these circumstances it is to be deemed that Annexure A-10 is not ⁱⁿ existence. The committee shall assess after proper notice to the applicant, his suitability uninfluenced by any of the observations in Annexure A-10 but taking into account the fact that this applicant is only an SSLC holder who passed in the Diploma Exam in Mechanical Engineering as early as in the year 1975 and submit the report after assessment. The second respondent is free to pass final orders in the light of the report to be submitted by the committee as indicated above. Accordingly we dispose of this application with the direction to the second respondent to constitute a committee of three experts in Mechanical Engineering for assessing the suitability of the applicant to get a category change as claimed by him and submit the report before the second respondent, who may pass final orders in the light of such report. This shall be done within a period of three months from the date of receipt of the copy of the Judgement.

10. The application is disposed of ^{on} the above lines. There will be no order as to costs.


(N. Dharmadan)
Judicial Member


(N.V. Krishnan)
Administrative Member