

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.220/2002

Wednesday, this the 17th day of August 2005

C O R A M:

HON'BLE Smt.SATHI NAIR, VICE CHAIRM
HON'BLE Mr.K.V.SACHIDANANDAN, JUDICIAL MEMBER

P.T.Viswambharan, S/o Late Thanjan,
Water Garden, Chandiroor P.O, Shertallai,
Alleppey District, working as Technical
Assistant-T-3 (Electrician), Central Institute
of Fisheries Technlogy, Matsyapuri, Cochin.

Applicant.

(By Mr.P.V. Mohanan, Advocate)

Vs.

1. The Director General, Indian Council of Agricultural Research, Krishi Bhavan, Dr.Rajendra Prasad Road, New Delhi – 110001.
2. The Director, Central Institute of Fisheries Technology Matsyapuri P.O, Cochin – 682029

Respondents

(By Mr.P.Jacob Varghese, Advocate)

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant commenced service as Electrician in Grade T-1 in Central Institute of Fisheries Technlogy (CIFT) in the functional group III namely 'Workshop (including Engineering workshop) Staff' in Category-I. The basic qualifications fixed was 1 year Trade Certificate. The applicant qualified Pre-degree, National Trade Certificate (2 years) in the trade of Wireman and Wireman License from Kerala State Electricity Board. After assessment the applicant

was granted merit promotion to the next higher grade T-2 from 1.7.95. The applicant averred that there is no higher diploma or degree in India in Wireman course and according to him it is sufficient for being considered him for recruitment to higher post in Category II including Grade T-II-e, T-4 and T-5. The qualification of Diploma/Degree in the relevant field is applicable only for the posts included in Engineering Workshop staff. In Group-III (Workshop Staff) the basic trade qualification fixed for Category I, II and III under the Technical Service Rules is Certificate of Competency because there is no diploma/Degree in the relevant field in anywhere in India. He has obtained the qualifications for appointment to the grade T-II-3 in Category II, as per Council's letter dated 1.2.95, the applicant ought to have been adjusted/placed to Grade T-II-3 w.e.f. 1.7.95 the date on which he promoted to the Grade T-I-3. He made a representation. The Indian Council of Agricultural Research vide its order dated 1.2.95 removed the category barrier between Category I & II for the qualified technical personnel and on 7.2.2000 the applicant was placed/inducted to the grade T-II-3 in category II in the pre-revised scale Rs.1400-2300 w.e.f. 1.7.95 (Annex.A1). The Modified Technical Service Rules was introduced by the Indian Council of Agricultural Research vide circular dated 3.2.2000, Appendix-X, as per which Grade T-I-3 in Category I and Grade T-II-3 in category II, being overlapping scales, have been renamed as Single Grade T-3 in the pay scale Rs.4500-7000. All existing technical personnel in grades T-I-3 and T-II-3 were placed to the Grade T-3 in Category II w.e.f. 3.2.2000 (Annex.A2) and the applicant



has also been placed in Grade T-3 (Annex.A3). The Technical Service Rules envisages career advancement of the technical personnel from one grade to another. The system of merit promotion from one grade to the next higher grade irrespective of occurrence of vacancies in the higher grade or grant of advance increments in the same grade is on the basis of assessment performance. An eligible person for consideration of such promotion or for grant of advance increments would be on expiry of 5 years service in the grade. The applicant completed 5 years of service in the grade T-II-3 (renamed as T3) as on 30.6.2000 and he is eligible for consideration for 5 yearly assessment promotion from Grade T-3 to the next higher grade T-4 in category II or grant of advance increments in the grade T-3. The Assessment Committee though met in the month of October 2001, his papers were not placed before the Committee and no order has been passed declaring his claim for consideration and respondent No.2 issued orders promoting persons who are similarly placed (Annex.A4). It was observed that the applicant was not qualified for placement to Grade-II-3. The qualifications for promotion to Grade T-II-3 in Technical Service Rules is Matriculation with 10 years experience in the relevant field. The Jodhpur Bench of the Tribunal declared that the said qualifications will apply for direct recruitment also for the post of T-II-3 in Category-II which was confirmed by the Apex Court (Annex.A5&A6). The applicant is thus qualified to hold the post of T-II-3 and eligible to be considered for promotion to the next higher Grade-T-4. The representation submitted on 2.1.2002 (Annex.A7) has not been considered. Aggrieved by the said inaction,

he has filed this O.A seeking mainly for the following reliefs:

- i) To direct the respondents to assess the applicant's output of work and performance under the modified technical service rule for consideration for promotion to the next higher grade T-4 or for grant of advance increments in the same grade under the 5 yearly assessment scheme.
- ii) To declare that the applicant is qualified and eligible for consideration of promotion to the next higher Grade T-4.
- iii) To direct the 2nd respondent to consider and dispose of Annexure A.VIII representation.

2. The respondents have filed a reply statement contending that CIFT is a Research Institute functioning under the administrative control of Indian Council of Agricultural Research, New Delhi. ICAR is a Society registered under the Society's Registration Act, 1860 which has its own rules and regulations. The applicant joined respondent No.2 Institute as Electrician (T-1) in the grade of Rs.975-1540 on 26.10.1984 in Technical Service under the functional group 'Workshop Staff' in Category-I. As per provisions of Technical Service Rules on completion of 5 years service in the Grade T-1, the applicant's performance was assessed and he was granted merit promotion to the next higher grade T-2 from 1.7.1990 in the pay scale of Rs.1200-2040 and subsequently on completion of 5 years service in the grade T-2 he was again assessed and granted merit promotion to T-I-3 in the scale of Rs.1400-2300 w.e.f. 1.7.95, thus he has already got two merit promotions. There was a Category barrier for a further merit promotion to Category II and the applicant is not entitled for promotion as the applicant do not possess the required qualification for a category jump to T-II-3 of Category-II. The employees classified as Technical, New Service Rules were framed

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and implemented initially from 1.1.1977 but later given retrospective effect from 1.10.75. The new scales were made applicable both to the future entrants as well as to the existing incumbents from 1.10.75 and the appointment, promotion, assessment etc. of the Technical Personnel are governed by the provisions of the Technical Service Rules. The applicant joined as T-I (Electrician) in 1984 and was granted merit promotion to the next higher grade T-2 from 1.7.1990 and T-I-3 from 1.7.95. The qualification/Alternative qualification for the posts coming under the category II the functional group 'Workshop' is – Three years Diploma/ Bachelor's Degree in the relevant field and the position as on 1.1.1977 for the purpose of promotions only against 33 1/3% vacancies reserved for departmental promotions. The applicant does not possess the said qualification. Since the applicant do not possess the required qualification for a category barrier he was continuing in the grade T-I-3.

3. The respondents removed the category barrier between Category-I and Category-II but those employees possessing qualification for the post in Category II were placed in the Grade T-II-3 of Category-II w.e.f. 1.1.95. The applicant did not so far improved his qualification or acquired Degree/Diploma or any other qualification prescribed for entering in Category-II he is not eligible for placement/assessment promotion to T-II-3 Grade in Category-II. The contention of the applicant that there is no Diploma in Wireman Course is not correct. Diploma in Electrical Engineering awarded by the State Board of Technical Education is the higher qualification in the relevant field. He has also joined for the part-time Diploma course in 'Electrical

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Engineering' for the Academic year 1995-96 in the Govt Polytechnic, Kalamassery after obtaining 'No Objection Certificate' from the Institute and he has not passed the said examination. The contention of the applicant regarding model qualification is also not correct. The model qualification prescribed for the three Categories of Technical Services under ICAR is meant for all functional group as identified under the Technical Service Rules and not for a particular group – Engineering Workshop Staff. The employees were allowed to submit their option to hold either the existing or modified Technical Service Rules and the applicant opted for Modified Technical Service Rules, accordingly he was placed in the Grade T-3 (category-II) since the Grade T-I-3 and T-II-3 ceased to exist from that date. The technical staff possessing qualification for category II were placed/inducted to T-II-3 Grade. The applicant's case was placed before the Placement Committee for consideration for placement to the Grade T-II-3 of Category-II.. On recommendation of the Committee the applicant was placed to the Grade T-II-3 of Category II w.e.f. 1.7.1995. This placement given to the applicant needs a review/rectification. The assessment proforma duly filled by the applicant was not placed for consideration alongwith others before the Assessment Committee as his placement to T-II-3 was a mistake. The eligibility for such consideration was only to those employees who possess Matriculation and 10 years service holding position as on 1.1.97 whereas the applicant joined service only on 26.10.84 and does not possess the qualification required for direct recruitment also. The judgment of the Jodhpur Bench of the Tribunal and the Apex Court



has no impact in the matter as the applicant was not holding any position on 1.1.77. Since the applicant is not Graduate or a Diploma Holder he is not eligible for Category-II as per the provisions of ICAR letter dated 1.2.95. He has already gained two promotions in Category-I.. It is also stated that the applicant is not entitled for the benefit of alternate qualification as per the ICAR letter dated 8.4.2002. Some of the staff members were also placed to T-3 grade irrespective of the qualification and assessment procedure are required to be reviewed and action will be taken in due course.

3. The applicant has filed rejoinder reiterating his contentions and further added that in Group-III functional group of workshop staff, the qualification of Higher Certificate is also an essential recognised qualification for direct recruitment. Vide Anxx.A22, similarly situated technical personnel possessing National Trade Certificate were promoted from Grade T-II-3 to T-4 by the proceeding dated 15.12.2000.

4. The respondents filed Additional Reply Statement and Second Additional Reply Statement emphasising their contentions and further added that vide Annex.R4, the qualification has been prescribed and the applicant does not even possess a higher certificate in the relevant field. At least 3 years experience for Diploma Holders or Higher Certificate in the trade with five years experience in the relevant field is essential as per the norms. The certificate he possessed is a 2 years National Trade Certificate which does not qualify him for consideration. The issue involved in O.A.No.220/02 is for consideration of placement in Category-II based on the ICAR

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letter dated 1.2.95. Three years Diploma/Bachelors Degree or equivalent qualification in the relevant field (Electrical Engineering) is essential for placement to Category-II and alternative qualifications are not applicable if one had joined the service after 1.1.77, as per Annx.R3. This was already communicated to the applicant. Similarly placed persons with whom the applicant is seeking parity are of qualified persons as per norms and he cannot be equated with them.

5. Shri P.V.Mohanan, Advocate, appeared on behalf of the applicant and Sh. Jacob Varghese appeared on behalf of the respondents. The learned counsel for the applicant has taken us through various pleadings, materials and evidences placed on record. We have given due consideration to their arguments as well.

6. The learned counsel for the applicant argued with emphasis that there is no Diploma in the field of Wireman awarded either by the Government or any other recognised institutions. There is only National Trade Certificate in Wireman which is the Higher Certificate in accordance with the Recruitment Rules. The categories of posts in Group-III namely Engine Driver, Tindal Bosun, Cookswain, Deck hand, Refrigeration Mechanic, Boilerman, Draftsman, etc., where no Diploma or Degree are available and those incumbents were placed to Grade T-II-3 on obtaining the qualification of Higher Certificate with 5 years experience. This is not stipulated in the notification but the qualifications contained in Appendix-IV of the Technical Service Rules. In any case the applicant is eligible to be considered for assessment promotion to the Grade T-4 in the Category II of Technical Service Rules. The learned counsel for the respondents on

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the other hand persuasively argued that the induction/placement already given to the applicant requires a review since it was a mistake. The applicant does not possess the required qualification in order to entitle him for the benefit of alternative qualification and therefore his case cannot be considered at any stretch of imagination.

7. We have given due consideration to the arguments advanced by the counsel.

8. It is borne out from the record that the Technical Service are grouped into three categories consisting of the following grade:

<u>Category</u>	<u>Grade</u>	<u>Pay scale</u>
Category I	Technician-I (T-1)	Rs.260-430
	Technician-2 (T-2)	Rs.330-560
	6000	4000-
Category II	Technician-3 (T1-3)	Rs.425-700
	7000	4500-
Category II	Technician-II3(T-II-3)	Rs.425-700
	7000	4500-
	Technician-4(T-4)	Rs.550-900
Category III	Technician-5(T-5)	Rs.650-1200
	10500	6500-
Category III	Not explained as not relevant in this case.	

9. The Technical Service Rules provide for Career Advancement by way of merit promotion from one grade to the next higher grade irrespective of occurrence of vacancies or grant of advance increments in the same grade on the basis of 'assessment of

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performance'. The persons concerned will be eligible for consideration for such promotion or grant of advance increments after the expiry of five years service in the grade. An extract of the rule is reproduced below:

'Career Advancement'

6.1 Career advancement of persons will be in their respective categories and will be done in the following manner:

6.2 There shall be a system of merit promotion from one grade to the next higher grade irrespective of occurrence of vacancies in the higher grade or grant of advance increment(s) in the same grade on the basis of assessment of performance. The persons concerned will be eligible for consideration for such promotion or for the grant of advance increments after the expiry of five years service in the grade.

6.3 Note: Since merit promotion are restricted within the category, persons holding higher grades viz grade Technician-1-3 in Category I Technician-5 in Category II and Grade Technician-9 in Category III are not eligible for further promotion. There is no bar for grant of advance increment to such Technical Personnel who are in the higher grade of Category subject to the maximum of three increments within the grade.

10. The applicant joined as T-1 (Electrician) In the scale of Rs.975-1500 only on 26.10.1984 and after assessment of his performance he was granted merit promotion to the next higher grade T-2 from 1.7.1990 and T-3 from 1.7.95. The qualification/Alternative qualification for the posts coming under the Category-II the functional group 'workshop' is given below:

Category-II – Essential Qualification

Three years Diploma/Bachelor's Degree in the relevant field

OR

National Trade Certificate of ITI/National Apprenticeship Certificate or equivalent qualifications with seven years experience in relevant field.

OR

Matriculate with ten years experience in the relevant field.

At least 3 years experience for diploma holders
OR

Higher Certificate in the trade with five years experience in the relevant field.

In fields where the duration of diploma courses available in the country is only two years, the minimum qualification will be two years instead of three years diploma.

Applicable to Council employees in position as on 1.1.1977 for the purpose of promotion only against 33 1/3% vacancies reserved for departmental promotions.

11. Admittedly, the applicant possesses the qualification of Pre-degree, National Trade Certificate (2 years) in the trade of Wireman and Wireman licence from KSEB, Kerala (Competency Certificate). The next higher grade promotion is T-II-3 in Category-II and the required qualification for a category barrier as stated above 3 years Diploma, Bachelor's Degree in the relevant field, etc. and the applicant do not possess the same. Normally the applicant could not have aspired for Category I to Category-II but the respondent No.1 vide letter dated 1.2.95 removed the category barrier between Category-I and Category-II. For better illustration, the relevant letter is reproduced as under:

"The employees with five years of service in grade Technician-2 and not possessing qualification prescribed for entry to Category II by direct recruitment will be placed in grade Technician-I-3 in the event of merit promotion through Five Yearly Assessment. Such employees in the event of improving their qualification and acquiring degree/diploma/any other qualification prescribed for entry in Category-II by direct recruitment will in case of merit promotion be placed in grade Technician-II-3 from 1st January of the year following the year in which degree/diploma/certificate is awarded."

12 Therefore, the employees possessing qualification for the post of Category-II were placed in Grade T-II-3 of Category-II w.e.f. 1.1.95. The Technical Service Rules was modified with effect from 3.2.2000 and incorporated in Appendix-X in the Rule (Annex.A2). The

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applicant was placed in Grade-T-3 in Category II w.e.f. 3.2.2000 by office order dated 5.7.2001 (Annex.A3), since Grade T-II-3 in Category-II being overlapping pay scales and renamed as Grade T-3 in Category II. Since Annex.A3 has become final and not cancelled, the claim of the applicant is that since he has been completed 5 years service in the Grade T-II-3, renamed as T-3 as on 30.6.2000, he is eligible for consideration for 5 yearly assessment promotion to the Grade-T-4. On going through the qualifications prescribed for Grade-II-3 and the applicant does not possess the said qualification, the question to be considered is as to whether he is entitled for the said upgradation/promotion by any rules or relaxations. It is also brought to our notice that the applicant's case was placed before the Committee but they have not considered as he does not possess the qualification. It is true that the employees who possess Matriculation with 10 years service holding position as on 1.1.1977 are also eligible for placement/assessment to T-II-3 grade of Category-II but these instructions are not applicable to the employees who joined in service after 1.1.1977. We find that since the applicant joined the service on 26.10.1984 these instructions are not squarely applicable to him as he joined in the service only after 1.1.1977. Therefore, we are of the view that the decision of the Jodhpur Bench of the Tribunal followed by the Apex Court judgment is not applicable in the case of the applicant who governed by the Modified Technical Service Rules wherein the qualification prescribed is 'Bachelor's degree in the relevant field or equivalent qualifications from a recognised University.' The applicant possesses only a National Trade



Certificate (2 years) in the trade of Wireman (Electrician) which cannot be equated with that of a Diploma of 3 years. The alternative qualification applicable to those employees who were in service during the period 1.10.75 to 1.1.77 cannot be extended to the applicant since he joined the Council's service only on 26.10.1984.

13 It is profitable to quote the Decision of the Apex Court reported in 1990 SC 535 Ranga Swamy Vs. Government of Andhra Pradesh wherein it is declared that the Courts/Tribunal are not competent to relax qualification prescribed by the competent authority. Therefore, we are of the considered view that the applicant's prayer for promotion from T-3 to T-4 cannot be acceded to when he does not possess the required qualification. However, there is an indication in the reply that since the applicant's promotion to T-II-3 is a mistake and respondents would like to review the order and proposed to revert him to the lower scale, is not justified. The fact that the applicant has been promoted to T-II-3 scale after the rules were amended by the respondents' Committee and he has been continuing in the same position for over 5 years, we are of the considered view that any reversion proposed by the respondent is not justified and against the provisions of Articles 14 & 16 of the Constitution. To support our view, the dictum laid down by the Hon'ble Apex Court in Budhi Nath Chaudhary Vs. Abahi Kumar & Ors, 2001 SCC (L&S) 589, the Hon'ble Supreme Court declared that it is not just and proper to revert an employee on the ground that he did not possess the regular qualification. The Apex Court granted relief on an equitable consideration as the candidates were in

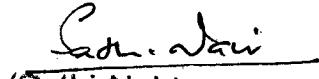
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employment for a long time, acquired the requisite experience which was lacking at the time of recruitment. The Hon'ble Supreme Court deprecated the practice of reversion. Therefore we declare that the applicant having acquired sufficient experience in T-II-3 Grade, any attempt of reversion from the said post will not be justified.

14. In the conspectus of the facts and circumstances, since the applicant is not entitled for any promotion as he does not have the requisite qualification, the O.A stands dismissed. However, the applicant should not be reverted from the present post. In the circumstances no order as to costs.



(K.V. Sachidanandan)
Judicial Member



Sathi Nair
(Sathi Nair)
Vice Chairman.

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