

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 222 of 2000

Monday, this the 22nd day of April, 2000

CORAM

HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

P. Ambu,
Supporting Staff Grade III (Peon),
Central Plantation Crops Research Institute
(C.P.C.R.I), Kasaragod.

....Applicant

[By Advocate Mr Santhosh & Rajan]

Versus

1. The Director General/Secretary,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi.
2. The Director,
Central Plantation Crops Research Institute,
(C.P.C.R.I), Kasaragod.
3. A. Gangaiah,
Junior Clerk,
Central Plantation Crops Research Institute,
(C.P.C.R.I), Kasaragod.
4. Union of India represented
by the Secretary to Government,
Krishi Bhavan, New Delhi.

...Respondents

[By Advocate Mr C.N. Radhakrishnan for R 1, 2 & 4]

The application having been heard on 3.4.2002, the
Tribunal delivered the following order on 22-4-2002:

O R D E R

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

The applicant who joined the service of the respondents
1 and 2 on 2.7.1981 as Supporting Staff Grade-I (Peon) was
appointed under the physically handicapped quota (Blind with 50%
disability). He was promoted to Supporting Staff Grade II on
4.10.1990 and Supporting staff Grade II in 1994. The 2nd

respondent has published the draft seniority of supporting staff (SS for short) as on 1.1.90 eligible for promotion to the post of Junior Clerk and Junior Technical Assistant (TI) against promotion quota. The relevant extract of the draft seniority list is at Annexure A-1. According to the final seniority list, the name of the applicant is at Sl.No.2 and the name of 3rd respondent is at Sl.No.3. The extract of the said list is at Annexure A-2. Consequent on the granting of retrospective regularization to casual labourers in the SS Grade-I based on the direction of this Bench of the Tribunal in O.A. 1145/91, the final seniority as per Annexure A-2 was revised and published on 21.12.93. As per the said list also the applicant was placed at Sl.No.2 and the 3rd respondent at Sl.No.3. The extract of the revised seniority list is at Annexure A-3. While so, the 3rd respondent was promoted to the post of SS Grade-II with effect from 4.10.90 and the seniority list as per Annexure A-3 was revised without calling for objections from the affected parties and the list was published on 17.2.94, the extract of which is at Annexure A-4. As per Annexure A-4 revised seniority list, the applicant is placed at Sl.No.3 and the 3rd respondent at Sl. No.1. Aggrieved by the action of the respondents 1 & 2, the applicant made a submission before the 2nd respondent on 1.3.94 which is at Annexure A-5. No action was taken on the said representation and therefore, the applicant was constrained to make further representation before the 1st respondent on 2.4.94 which is at Annexure A-6 and thereafter sent repeated reminders, but no reply received. The matter was referred to grievance redressal cell on 20.10.94 in Form No.1 and even then the matter was not attended to and thus the matter was taken up before the Grievance committee on 17.12.94 in Form No.II which is reproduced as under:

"As per the seniority list of Supporting staff published on 30.4.1992, my position is No.2. As per the seniority list of Supporting Staff eligible for promotion to Group C posts, circulated on 21.12.93 also my position is No.2 in the list. However, recently, one post of Jr. Clerk was filled by promotion of my junior, who is No.3 in the seniority list. I was informed by the Office on 11.7.94 that my junior Shri Gangaiah was earlier promoted as SS Gr.II, and hence he is senior to me in Supporting Staff. Against this promotion as well as to the promotion of Jr. Clerk, I had requested to the higher authorities vide my representation dated 3.4.1994 (copy enclosed). In spite of of my reminder, there is no action from any side. My position in the seniority list of Supporting Staff Gr.I and also in the list of Supporting Staff eligible for promotion to Group C posts may be restored and the eligible promotion given to me on due date."

2. The Grievance Committee considered the matter on 2.5.95 and "found that orders clearly give a preference to visually handicapped". Therefore, while considering persons for promotion to Grade-II Supporting Staff, the case of P.Ambu should have preceded Mr.Gangaiah. The copy of the proceedings dated 2.5.95 is at Annexure A-7. The Review DPC met on 6.7.95 and reviewed the promotion of the applicant and the 3rd respondent and hence the applicant was promoted on 25.7.95 to the post of SS Gr.II with effect from 14.10.90, the date on which the 3rd respondent was promoted, as per order dated 25.7.95 (Annexure A-8). The seniority list as per Annexure A-4 should have been revised by placing the applicant above the 3rd respondent, but instead of doing that the 3rd respondent was promoted to the post of Junior Clerk with effect from 10.10.94. Aggrieved by the action of the 2nd respondent, the applicant made several representations but since these were not attended to by the 2nd respondent, he made a detailed representation dated 15.6.98 (Annexure A-9) before the 1st respondent which was rejected by him as per Memorandum dated 18.2.99 (Annexure A-10).

Aggrieved by the orders of the 1st respondent, the applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act of 1985 seeking the following reliefs:

- "(a) call for the records leading to the issue of Annexure A-10 and quash the same;
- (b) issue a direction to the respondents 1 and 2 to promote the applicant to the post of Junior Clerk from the date of promotion of the 3rd respondent, with all consequential benefits;
- (c) grant such other further reliefs that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the same."

3. Respondents 1, 2 and 4 filed a reply statement contending that the application is not maintainable and the prayer sought for is not sustainable. The applicant was appointed as Supporting Staff Grade II on 4.10.90. His contention that he is entitled for proforma promotion as Junior Clerk with effect from the very same date on which the 3rd respondent, who is junior to the applicant, was promoted is not maintainable since promotion to the post of Junior Clerk is not automatic. Supporting staff Grade II is eligible for promotion to the post of Junior Clerk subject to seniority-cum-fitness as per the relevant Recruitment Rules. The Recruitment Rules provide that for the post of Junior Clerk the candidate should possess Educational Qualification of Matriculation standard and proficiency in typewriting at a minimum speed of 30 wpm in English or 25 wpm in Hindi. The departmental candidate will be allowed to qualify the typewriting test within a period of one year from the date of appointment after qualifying the written test. The job of Junior Clerk in the Institute involves reading and typing of various matters including scientific data where accuracy is absolutely essential. A visually handicapped person will not be able to discharge such duties and the post of Junior

Clerk has not been identified for the visually handicapped candidate. This applies in case of direct recruitment as well. The 3rd respondent is orthopedically handicapped but having fitness with regard to eyesight and ability to discharge duties of a junior clerk. The applicant is visually handicapped and as per the medical certificate issued by the competent Medical Board as early as on 1992 it was certified that the applicant was suffering from Aphakia (absence of the lens of an eye, occurring congenitally or as a result of trauma or surgery) in his both eyes and though there is no total absence of sight his visual acuity in each eye is 6/60 and there is no improvement with glasses. True copy of the certificate dated 28.8.92 is at Annexure R-1(a). No exemption was granted to visually handicapped persons and respondents have quoted the O.M. No. 14020/2/91-Estt(D) dated 29.9.92 of the Department of Personnel & Training as under:

"The undersigned is directed to say that instructions have been issued by this Department from time to time laying down the criteria for grant of exemption from passing the typing test in respect of LDCs who do not belong to Central Secretariat Clerical Service. In the light of the provisions contained in this Department O.Ms No.14/10/78-CSII dated 7.6.1990 and 24.9.1990 and OM NO.12/5/91-CSII, dated 23/23.8.1991 which have been issued after discussion with the Staff side, the existing instructions on the subject have been simplified and consolidated as in this O.M.

2.(1) ****

(8) Physically Handicapped, (a) Physically handicapped persons who are otherwise qualified to hold clerical post and who are certified as being unable to type by the Medical Board attached to Special Employment Exchanges for the Handicapped (or by a Civil Surgeon where there is no such Board) may be exempted from passing the typing test.

(b)The term 'physically handicapped persons' does not cover those who are visually handicapped or who are hearing handicapped but covers only those whose physical disability permanently prevents them from typing."

Therefore, it is contended that the applicant is not eligible for the claim.

4. The applicant has filed a rejoinder contending that Junior Clerks are also identified as suitable for the visually handicapped persons. This will be clear from the order dated 27.2.96 (Annexure A-11) of the Government of India, Ministry of Personnel, Public Grievances and Pension and as far as typewriting test is concerned, even according to the official respondents, the candidate has to be qualified in the typewriting test within a period of one year from the date of appointment. Therefore, the reasons stated for non-consideration of the applicant for promotion to the post of Junior Clerk is not sustainable.

5. Respondents 1, 2 and 4 also filed an additional reply statement contending that the plea of the applicant is not tenable. Though notice was served on the 3rd respondent, neither he did appear nor filed any reply statement.

6. We have heard the learned counsel for the applicant as also the respondents and perused the materials placed on record. Annexures A1, A2 and A3 are draft seniority, final seniority and revised seniority lists of Supporting Staff as on 1.1.90 respectively and are "eligible for promotion to the post of Junior Clerks and Junior Technical Assistants (TI) against promotion quota", wherein the applicant was placed before the 3rd respondent. The applicant's counsel argued the very heading of the seniority lists which shows the eligibility for promotion to the post of Junior Clerks and promotion, if any, should have been made based on these seniority lists and when the revised



seniority list (Annexure A-4) was published, the 3rd respondent has been put above the applicant without notice, which is against the natural justice and cannons of service law. Annexure A-4 also does not stipulate any reason for such up-listing and all his further representations were not considered, but the Grievance Committee meeting held on 2nd May, 1995 (Annexure A-7) has directed to consider the applicant in precedence to Shri Gangaiah, the 3rd respondent, while considering SS Grade-II post, which reads as follows:-

"The meeting concluded at 1-00 PM without clear consensus. Subsequently, the orders issued from time to time regarding reservations for handicapped persons were verified and it was found that orders clearly give a preference to visually handicapped. Therefore, while considering persons for promotion to grade SS-II, the case of Shri P. Ambu should have preceded Mr. Gangaiah subject to fitness of Mr Ambu. In case if this has not been done, the same may kindly be considered for rectification by the Director."

7. Annexure A-10 indicate that the date of notional promotion of the applicant was with effect from the forenoon of 4.10.90, the date on which the 3rd respondent was promoted to SS Gr.II. In Annexure A-9 representation the applicant has submitted that visually handicapped persons should be considered for seniority over the orthopedically handicapped persons and the Grievance Cell recommended that the orders give a preference to visually handicapped persons over orthopedically handicapped persons and subsequently the applicant was promoted to the post of SS Grade-II (Peon) with effect from 4.10.90, but not given any monetary benefit from the date of his promotion and requested the 1st respondent to pass orders on the following based on the orders and instructions issued by ICAR:-



"1. Both the erroneous promotions (Promotion to the post of Supporting staff Grade II and to the post of Junior Clerk) made by CPCRI may kindly be ordered to be cancelled as the same is illegal.

2. I may be promoted to the post of Supporting Staff Grade II and to the post of Junior Clerk with effect from the date of Shri A. Gangayya has been promoted, illegally for which I was legally eligible, with all monetary benefits retrospectively."

And consequent to thereof Annexure A-10 has been passed which is under challenge, is reproduced as under:

WHEREAS the representation submitted by Shri P. Ambu, SS Gr.III (Peon) has been carefully considered by the Council, and the undersigned is directed to inform him as follows:

WHEREAS on the recommendation of the DPC held on 17.9.90 Shri A. Gangayya, SS Gr.I (Peon) was promoted to SS Gr.II (Peon) with effect from 4.10.990, against the post reserved for physically handicapped (OH) Personnel in terms of combined roster (Gr.IV, III, II) maintained at this Institute as per guidelines existed then. Aggrieved by this, Shri P. Ambu, SS Gr.I (Peon), who is physically handicapped (VH) and senior to Shri A. Gangayya in the SS Gr.I has filed an application before the IGC, requesting to consider his claim for promotion to Gr.II from the date on which Shri Gangayya was promoted. The IGC examined the case at length, and recommended that the physically handicapped (VH) category should get preference over PH(OH) and hence Shri Ambu should have preceded Mr. Gangayya for promotion to Gr.II. This recommendation was accepted by the Competent Authority and accordingly a review DOC was convened and Shri Ambu was promoted to Gr.II w.e.f. 4.10.90. the date on which Shri Gangayya was promoted. Shri Ambu's actual date of promotion was 13.10.94. Shri Ambu's pay in the promoted post was fixed under FR 27 as per the instructions contained in the O.M. No. 22011/5/86-Estt (D) dated 10.4.89 of Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training.

WHEREAS Shri Ambu had claimed for arrears of pay for the period from 4.10.1990 to 12.10.94, but was not granted arrears of pay as per the instructions contained in the aforesaid OM viz.

"On promotion, his pay should be fixed under FR 27 at the stage it would have reached had he been promoted from the date the officer immediately below him was promoted, but no arrears would be admissible."

WHEREAS Shri Gangayya was then promoted to the post of Junior Clerk w.e.f. 10.10.94, Shri Ambu's claim that Shri Gangayya's promotion to the post of Junior Clerk was based on the reservation benefits extended to physically handicapped persons, for which the first point is to be given to PH (Blind) is not in order. Shri Gangayya was promoted to the post of Junior Clerk based on his seniority and fitness. Shri Ambu does not fulfil the required qualification prescribed for the post of Junior clerk i.e. he does not possess the required typing speed of 30 wpm English or 25 wpm in Hindi and thus he being ineligible, was not considered for promotion to the post of Junior a Clerk.

In this connection, Shri Ambu's attention is invited to Hon'ble Supreme Court's judgment of March, 8, 1998 in the case of R. Prabhadevi and another Vs. Union of India and other specifically held as follows:-

"Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed, for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post."

NOW THEREFORE, Shri Ambu is hereby informed that his claim for promotion to the post of Junior Clerk, on the same date on which Shri Gangayya was promoted is untenable and cannot be agreed to."

8. The contention of the respondents is that the promotion to the post of Junior Clerk is not automatic. Supporting Staff Grade-II is eligible for promotion to the post of Junior Clerk subject to seniority-cum-fitness as per the relevant Recruitment Rules. Recruitment Rules provide that for the post of Junior Clerk the candidate should possess educational qualification of Matriculation standard and proficiency in typewriting at a minimum speed of 30 wpm in English or 25 wpm in Hindi. The departmental candidate will be allowed to qualify the typewriting test within a period of one year from the date of appointment after qualifying the written test. The job of Junior Clerk in the Institute involves reading and typing of



various matters including scientific data where accuracy is absolutely essential. A visually handicapped person will not be able to discharge such duties and the post of Junior Clerk has not been identified for the visually handicapped candidate. This applies in cases of direct recruitment as well. The 3rd respondent is orthopedically handicapped but having fitness with regard to eyesight and ability to discharge duties of a Junior Clerk. The medical certificate issued by the competent Medical Board as early as in 1992 shows that the applicant was suffering from Aphakia (absence of the lens of an eye, occurring congenitally or as a result of trauma or surgery) in his both eyes and though there is no total absence of sight, his visual acuity in each eye is 6/60 and there is no improvement with glasses. Therefore, the fact that the applicant was considered to be promoted to the Supporting Staff Grade-II which is an identified post for the visually handicapped does not mean that the promotion to the post of Junior Clerk should be automatic. Though the applicant has taken a contention which is reiterated in the rejoinder that Junior Clerks are also identified as suitable for the visually handicapped person, he has produced a true copy of the order dated 27-2-1996 (Annexure A-11) of the Government of India, Ministry of Personnel, Public Grievances and Pensions, which is reproduced as under:-

"2. IDENTIFICATION OF POSTS

An Expert Committee was set up by the Ministry of Welfare under the Chairmanship of Shri M.C.Narasimhan to identify the jobs which can be performed by various categories of physically handicapped persons without loss of productivity. The Committee made an in depth study of the various jobs done in Government offices as well as Public Sector Undertakings and identified 1100 titles under Group C & D as suitable for the handicapped persons alongwith the physical requirements for all these jobs. The Committee also identified keeping in view the physical requirements and functional classification of disability 416 posts in Group A & B in

which preference will be given to physically handicapped persons in the matter of requirement. The list of these posts is available in the Report of the Committee on identification of jobs submitted in 1986."

9. The said Office Memorandum is in conformity with that of the M.C.Narasimhan Committee Report, an Expert Committee set up by the Ministry of Welfare to identify the jobs which can be performed by various categories of physically handicapped persons without loss of productivity. It is further stated that the Committee made an in depth study of various jobs done in Government offices as well as Public Sector Undertakings and identified various posts for the handicapped persons. But, the said Office Memorandum makes it clear in paragraph 1.5 that in case a Department considers that it is not possible to provide for the physically handicapped to the extent of the reservations in view of the nature of duties expected to be performed by the employees in any particular Department, the concerned Department is exempted from the reservation orders. The grant of such exemption shall be decided by an inter-departmental Committee consisting of representatives of the Ministry of Welfare, Department of Personnel and Training, Department of Health and the Administrative Department concerned. Therefore, it is clear that if an exemption is to be granted to a particular category of handicapped persons to a particular job, the productivity also will be evaluated and counted by the Committee and considering all these facts on account the impugned order Annexure A-10 was ordered, wherein the judgement of the Hon'ble Supreme Court in the case of R. Prabha Devi and Others vs. Government of India and Others [AIR 1988 SC 902] is also quoted. The dictum laid down in that judgement, which is quoted in Annexure A-10, is that seniority in a particular cadre does not entitle the public servant for promotion to a higher post unless



he fulfills the eligibility condition prescribed by the relevant rules, that seniority will be relevant only amongst persons eligible and that seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post. Neither the applicant, nor the respondents have produced any document to show that the post of Junior Clerk is identified for visually handicapped person. On the other hand, Annexure A-11 gives a different finding that the said post is not identified for visually handicapped person and it is the prerogative of the Department to identify such posts considering the feasibility and productivity among the handicapped categories. The Department is a rule making authority certainly competent to identify the post. That is a matter for the rule making authority/Department to decide. The Tribunal cannot sit in judgement over the decision of the Department in identifying the post unless it is proved by examples of precedence or definite rule identifying the post. No Court or Tribunal can substitute its own view in the matter and for that reason it cannot be said that the decision of the authority is violative of any fundamental right or Articles 14 and 16 of the Constitution.

10. The other question as to the time granted for passing the test in case of selection etc. comes only after considering the eligibility as to the identification of the post. Annexure A-11 is very clear that it is for the Department to identify the posts for handicapped categories. The respondent Department has categorically denied having identified the said post and quoted the Office Memorandum dated 29-9-1992, in which Clause (b) stated as follows:-

"The term 'physically handicapped persons' does not cover those who are visually handicapped or who are hearing handicapped but covers only those whose physical disability permanently prevents them from typing."

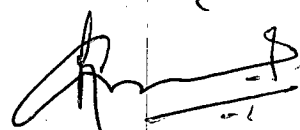
11. Though the applicant's counsel submitted that the applicant is confident in passing the typing test if he is given an opportunity within one year, if not the respondents are at liberty to revert him, cannot be accepted since the applicant is in no way able to discharge the duties considering his almost total blindness (6/60 in each eye) and especially when the post of Junior Clerk is not identified for visually handicapped category. Therefore, we find that there is no merit in this application and the same is only to be dismissed.

12. In the conspectus of facts and circumstances of the case, we find that since the post of Junior Clerk is not identified for the visually handicapped person as enunciated by Annexure A-11 and the seniority cannot be any criteria for promotion as per the Hon'ble Supreme Court's ruling discussed in Annexure A-10 order, there is no merit in the application and accordingly, this Original Application is dismissed. No order as to costs.

Monday, this the 22nd day of April, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

P.

APPENDIX

Applicant's annexure

- A-1 True copy of relevant extract from draft seniority list of Supporting Staff as on 1.1.90.
- A-2 True extract of final seniority list of Supporting Staff as on 1.1.90.
- A-3 True extract of revised seniority list of Supporting Staff as on 1.1.90.
- A-4 True extract of revised seniority list of Supporting Staff as on 1.1.91.
- A-5 True copy of applicant's submission dated 1.3.94 before the departmental authorities.
- A-6 True copy of applicant's representation dated 2.4.94 addressed to the first respondent.
- A-7 True copy of proceedings of the Grievance Committee held on 2.5.95 at Kasaragod.
- A-8 True copy of Office Order F.No.10(2)5/75-Estt dated 25.7.95 issued by the Senior Administrative Officer (Estt).
- A-9 True copy of the applicant's representation dated 15.6.98 addressed to the first respondent.
- A-10 True copy of Memorandum No. F 10(2)5/75-Estt dated 18.2.99 issued by the Senior Administrative Officer, Central Plantation Crops Research Institute, Kasaragod.
- A-11 True copy of O.M.No.36035/14/95-Estt (Res) dated 27.2.96 of the Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel and Training, New Delhi.

Respondent's annexure

- R-1 True copy of certificate dated 28.8.92 of Medical College Hospital, Calicut.