

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 239/90
XXXXXX

199

DATE OF DECISION 1.5.92

K Chandran Nair and others Applicant (s)

Mr B Raghunathan Advocate for the Applicant (s)

Versus

Union of India rep. by the
Secretary to Govt. of India, Respondent (s)

Dept. of Space, India Space

Research Organization, F. Block,
Cauvery Bhavan, District Office Road,
Bangalore-560009 & others. Advocate for the Respondent (s)

Mr NN Sugunapalan, SCGSC

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member
and

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

Mr NV Krishnan, A.M

The applicants are Tradesmen under the Respondent-3 and they are aggrieved by the fact that they have not been absorbed as Technical Assistants-B in the Department with effect from 1.4.76 and given consequential benefits.

2 The applicants were initially appointed on various dates in 1972 as Workcharged Tradesmen in the Civil Engineering Division. By the Annexure-A order dated 29.11.73, it was decided to absorb the workcharged staff in the Civil Engineering Division subject to certain restrictions mentioned therein. Para 3 of the order is relevant and is reproduced below:

"3. In the light of the above facts it has now been decided that the staff who are on work charged employment of the Civil Engg. Division of the Department of space

for periods exceeding three years continuously shall, as on 1st April of each year and subject to assessment by an appropriate committee be absorbed in the ISRO on regular basis. These absorptions shall be subject to the following terms and conditions:-

(i) On absorption in ISRO, the staff will be governed by all rules and regulations and conditions of service applicable to ISRO staff including liability to all India transfer.

(ii) At the time of such absorption, a specific undertaking should be obtained from each member of the staff that he will not claim any right to any consideration for any condition of service or benefit arising out of the service rendered by him in the workcharged establishment of the Civil Engg. Division. On the date of his absorption in the ISRO a member of the staff shall not be entitled to any increment, promotion or other alterations in the status and shall be absorbed on identical pay and scale of pay as was drawn by him as on the 1st April concerned.

(iii) The member of the staff so absorbed in ISRO shall not claim any right to seniority or promotion within ISRO by virtue of service rendered by him in the Civil Engg. Division and he shall for all purpose be treated as a fresh appointee in the particular category and grade in ISRO as on that date."

3 It was clarified by the Annexure-B order dated 8.3.74 that while absorbing work charged staff in the ISRO Units, they may be interviewed/ trade tested for the 'highest eligible grade as per ISRO norms and if found suitable, may be appointed to such grades'. If, however, they are not found suitable for the highest grade eligible as per the ISRO norms, they may be absorbed on appropriate grade and pay as determined by the Selection Committee based on their performance in that interview/test. The applicants were absorbed as Tradesmen B. The dates of absorption are not mentioned.

4 The main contention of the applicants is that they should have been absorbed as Technical Assistant-B,

rather than as Trademen-B on the basis of their qualification and the interpretation to be placed on such qualification by departmental instructions. In this respect, the applicants heavily depend on the guidelines issued in Annexure-C dated 1.7.72 as to how qualification has to be determined. The guidelines regarding diploma is as follows:

" CIRCULAR

Dated 1.11.72

Enclosed herewith is a copy of the Circular regarding the procedure for clarification and/ or receiving complaints from the employees regarding normalisation. A copy of the general guidelines is also enclosed. Please assemble in the Conference Hall No.2 of the SSTC Building at 1.00 PM tomorrow, the 2nd November, 1972 so that we may be able to provide you with further details and answers for any questions that may arise regarding the matter.

(Dr Sita C Amba Rao)
Personnel Officer

To Divl Representatives
Shri T Sadasivan, Technical Assistant
ELP Division."

"GUIDELINES FOLLOWED FOR NORMALISATION

1 Degree/Diploma referred to in the norms means Degree/Diploma with not less than 60% marks in final examination. If marks obtained are less than 60% the qualifying experience required for the grade is enhanced by one year. It is enhanced by two years in respect of those who obtained less than 50% marks."

The applicants contend that their qualifications for the purpose of absorption should be evaluated in terms of this Annexure-C circular. It is contended that all the applicants have passed the Diploma in Engineering with 2nd Class i.e., with more than 50 per cent marks. Hence, they contended that 'they need to equip themselves with experience for only one year for absorption/ regularisation in the post of Technical Assistant B Grade' for this would then render them to be considered as

having acquired a Diploma with not less than 60 % marks as clarified above. Hence, by applying norms in the circular dated 1.11.72 extracted above, they should be considered to be fully qualified to the post of Technical Assistant-B Grade which is in a much higher grade and u have that they/ claimed they were entitled to be absorbed as Technical Assistant-B and not merely as Tradesmen-B.

5 In this connection, the applicant, rely on a judgment rendered by the High Court of Andhra Pradesh which is produced as Annexure-G.

6 The applicants had filed OP 5051/91 in the High Court of Kerala for seeking this relief. That was disposed of with a direction to the respondents to dispose of the representation made by them. That order of the High Court has been complied by the impugned Annexure-F order dt. 8.9.83 which disposes of the representation of S Mohankumar, one of the applicants in the present case. In so far as the issue of qualification is concerned, the impugned Annexure F order states that diploma holders with first class alone are eligible for appointment to the category of Technical Assistants. As the applicant is only a second class diploma holder, he is not eligible for any scientific/ technical posts. For the purpose of absorption from the workcharged establishment to the regular establishment, the department I.T.I equated a second class diploma to Matric ~~H.I~~ vide letter I.T.I. dated 24.5.78 and the Matric H.I are eligible for direct

recruitments to the post of Tradesmen B only. Hence, he was absorbed as Tradesman-B. The applicant is, however, dissatisfied with this reply.

7 It is for these reasons, they sought the following reliefs:

- "(a) to call for the records leading to the issuance of Annexure-F and quash the same;
- (b) to issue an order declaring that the applicants are entitled to be absorbed as Technical Assistant 'B' with effect from 1.4.1976 and they are further entitled to be promoted as Technical Assistant 'C' with effect from 1.4.1979 and further promotions to the grade of Engineers on that basis;
- (c) to issue an order directing the respondents to regularise service of the applicants with effect from 1.4.1976 in the initial cadre of Technical Assistant 'B';
- (d) to issue an order to the respondents directing to give due promotions to the applicants based on the date of their absorption as 1.4.1976 to the post of Technical Assistant 'B' with all attendant benefits."

8 The respondents have filed a reply stating that the applicants are not entitled to any relief as their absorption as Tradesman-B ^{was} strictly in accordance with the Recruitment Rules obtaining in the organization. It is contended that the applicants were absorbed from the category of workcharged tradesmen. They cannot rely on the Annexure-C clarification which applies only to the normalisation of the regular tradesman and who existed in the department then and who are quite distinct from the work charged tradesmen. It is pointed out that the Annexure A Memorandum dated 29.11.73 contains the decision to absorb the workcharged employees as regular employees

(1)

of the department. For this purpose, they are treated as direct recruits. The absorption will be to the trade to which they are working for the time being, which would be a minimum level of absorption, or if they are found fit for any higher grade of absorption by the Committee appointed for this purpose, they could be so absorbed to such higher grades.

9 The applicants' only qualification was 2nd class diploma and they were absorbed as Tradesmen-B in terms of the qualifications applicable to this trade. It is clarified that the Annexure-C circular was intended to answer certain questions relating to the normalisation of certain existing regular staff. That circular was issued on 1.7.72 before it was decided to absorb workcharged employees and hence will not apply to the workcharged employees.

10 In regard to the judgment of the Andhra Pradesh High Court, it is admitted that, by mistake, certain workcharged employees were absorbed as Technical Assistant Gr.B and were sought to be reverted. It is this reversion that has been challenged in that judgment and that case is distinguishable because, admittedly, there was a mistake committed in the interpretation of the rules.

11 We have carefully considered the matter and perused the records.

12 Admittedly, the order regarding absorption of work charged staff was issued for the first time by the Annexure- A dated 29.11.73. This circumstance alone is sufficient to reject the contention of the applicants

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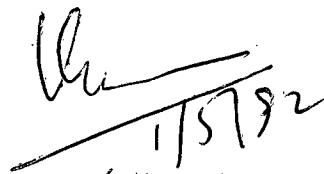
that the Annexure-C circular applies to the evaluation of qualification of workcharged employees based on which the claim is made that they are qualified to be absorbed as Technical Assistant-B, for, the Annexure-C circular was issued on 1.7.72, when absorption of workcharged employees was not in contemplation at all. Obviously, the guideline given therein applies to the staff already in position who were to be 'normalized' by giving appropriate posts on absorption. Thus, as Annexure-C is not of any help to the applicants, they can have no case at all that they are qualified for the post of Technical Assistant-B.

13 In so far as the judgment of the Andhra Pradesh High Court (Annexure-G) is concerned, we regret our inability to agree with the conclusions reached therein. The applicants have only produced a typed copy of the judgment which is not a certified copy. We presume that the text of the judgment has been reproduced correctly. The paras of the judgment are unfortunately not numbered. For the sake of convenience, we have numbered the paras. In para-1, a reference is made to the proceedings dated 12.12.75 dealing with the procedure for recruitment to several posts. Those proceedings have been exhibited as Annexure-D in the present application. It is stated in the judgment that the said proceedings contemplate recruitment to several technical posts as also absorption of staff working in the workcharged establishment. A specific reference is made to para 9.3 of the proceedings

in this behalf (i.e., Annexure-D). We find that Annexure-D does not refer to absorption of workcharged staff and especially in para 9.3 does not contain such a reference. The judgment also does not deal with the contention raised by the applicants' placing reliance on Annexure-C. In the circumstance, we do not find anything in the Annexure-G judgment of the Andhra Pradesh High Court judgment to support the contention of the applicants in this case.

14 For the aforesaid reasons, we find no merit in this application which is dismissed. There will be no order as to costs.


(AV Haridasan)
Judicial Member


115782
(NV Krishnan)
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.239/90

DATE OF DECISION: 21.6.93

1. K.Chandran Nair
2. N.Gopalakrishnan Nair
3. P.Sivananda Kumar
4. K.Surendran
5. N.Thrividikraman Nair
6. R.Asok Kumar
7. S.Mohankumar
8. M.Jamaludeen .. Applicants
Mr. S.Ramesh Babu .. Advocate for the
vs. Applicants

1. Union of India, represented by
Secretary to Government of India,
Department of Space,
Indian Space Research Organisation,
F-Block, Cauvery Bhavan,
District Office Road,
Bangalore-560 009.
2. Chief Engineer,
Civil Engineering Division,
Department of Space,
Indian Space Research Organisation,
F-Block, Cauvery Bhavan,
District Office Road,
Bangalore- 560 009.
3. Executive Engineer(Civil),
Civil Engineering Division,
Department of Space,
V.S.S.C., Trivandrum.
4. Executive Engineer(Electrical),
Civil Engineering Division,
Department of Space,
V.S.S.C., Trivandrum.

Mr. George C.P.Tharakan, SCGSC .. Advocate for the
Respondents

CORAM:

THE HON'BLE MR.JUSTICE C.SANKARAN NAIR, VICE CHAIRMAN

THE HON'BLE MR.R.RANGARAJAN, ADMINISTRATIVE MEMBER

JUDGMENT

C.SANKARAN NAIR(J),VICE CHAIRMAN:

Applicants seek to quash Annexure-F by which Respondent -2, rejected representations of the applicants for absorption as Technical Assistants. Applicants are Tradesmen in 'Workcharged Establishment'. Annexure-A dated 29.11.73 contained a proposal to absorb such persons in the regular establishment. Annexure-B dated 8.3.74 made a departure from Annexure-A, stating that persons in the Workcharged Establishment could be considered to any post according

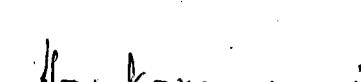
to the qualifications they possess, consistent with the norms of the 'ISRO'. According to applicants, as holders of second class Diploma in Civil Engineering, they are entitled to be considered for the posts of Technical Assistants in the scale of Rs.400-950(pre-revised). As matters stood at the time of Annexure-B, 1st class Diploma in Civil Engineering was the qualification. Applicants would refer to Annexure-C and submit that 2nd class in Diploma with one year experience could do service. So saying, they approached this Tribunal earlier. This Tribunal held that Annexure-C dated 1.11.72 was issued prior to Annexure-A and that Annexure-C, and the stipulation therein could not have been in the contemplation of Annexure-A. Against the decision of the Tribunal, applicants moved the Supreme Court and the Supreme Court directed the applicants to move this Tribunal afresh by appropriate proceedings for considering whether the circular at Annexure-C is applicable.

2. Having regard to the totality of the circumstances and interaction of a decision taken herein on other categories of employees, we think that Respondent-2 should consider the effect of Annexures A, B & C in the totality circumstances. In doing this, they will hear the applicants and others who are likely to be affected.

3. Applicants may make detailed representations before Respondent-2 and the said respondent after notice to necessary parties will take a decision in the matter within four months of the date of receipt of representations.

4. Application is disposed of as above. Parties will suffer their costs.


R. RANGARAJAN
ADMINISTRATIVE MEMBER


C. SANKARAN NAIR (J)
VICE CHAIRMAN

Dated the 21st June, 1993.

List of Annexures:

1. Annexure-A True copy of order No.D.II/10(14) 73 dated 29.11.73 issued by the 1st respondent.
2. Annexure-B True copy of order No.DII/10 (14)73 dated 8.3.74 issued by the 1st respondent.
3. Annexure-C True copy of circular No.VSSC/PO/4/72 dated 1.11.72 issued by the Personnel Officer, VSSC.
4. Annexure-E True copy of memorandum No.16/5/81-CED(H) dated 8.9.83 issued by the 2nd respondent.

3-3-93
(37)

RA-139/92 in OA-239/90

Mr Ajith Prakash for SCGSC
None for review applicants

Even though notice was issued to the parties whether the same has been served on the original applicant has not been made clear by the Registry. The learned counsel for the respondents is present before us today.

Issue fresh notice to the review applicants on the RA to appear for hearing their RA on 31.3.93. The learned counsel for the respondents is directed to file a statement to the RA within 3 weeks with a copy to the review applicants.

List on 31.3.93.

(AVH)

(SPM)

3-3-93

Mr. Ramesh Babu

Mr. GCP Tharakan (by proxy)

RA 139/92
in OA 239/90
MP 1571/92

(17)

We have heard the learned counsel for both the parties on this RA. The main contention of the Review application is that vide order dated 8.3.94 at Anne.(B) the ISRO norms prescribed in Anne.(C) have been made applicable to Anne.(A) regarding the absorption of work-charged staff and that this ^{fact} has been overlooked by the Tribunal. It appears that the Review application have moved an SLP on identical ground and the Supreme Court by its' order dated 17.9.92 has given liberty to the petitioner to move this Tribunal too. In the above light, we condone the delay and allow the review application, recall the order of this Tribunal dated 1.5.92 in OA 239/90 and direct that the OA shall be listed for re-hearing by this Bench on 26.4.93.

(AV HARIDASAN)
Judicial Member

(SP MUKERJI)
Vice Chairman

31.3.93