

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 253 of 2010

Friday....., this the 11th day of November, 2011

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Telson Norohna,
S/o. Antony Norohna,
Senior Technical Assistant,
Centre for Marine Living Resources &
Ecology (CMLRE), Ministry of Earth Sciences,
Block – C, VI Floor, Kendriya Bhavan,
P.B. No. 5415, CEPZ P.O. Cochin – 682 037 ... Applicant.

(By Advocate Mr. Shafik M.A)

v e r s u s

1. Union of India, represented by
The Secretary to the Government of India,
Ministry of Earth Sciences, New Delhi.
2. The Under Secretary to the
Government of India, Ministry of Earth Sciences,
Mahasagar Bhavan, Block – 12,
CGO Complex, Lodhi Road, New Delhi.
3. The Director (Admin),
Department of Ocean Development,
Ministry of Earth Sciences, New Delhi,
Lodhi Road, New Delhi.
4. The Director,
Centre for Marine Living Resources &
Ecology (CMLRE), Ministry of Earth Sciences,
Block – C, VI Floor, Kendriya Bhavan,
P.B. No. 5415, CEPZ P.O. Cochin – 682 037
5. Sri V. Ramanathan,
STA, Integrated Coastal & Marine Area
Management (ICMAM), Project Directorate,
NIOT Campus, Velachary-Tambaram Main Road,
Pallikaranni, Chennai ... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC for R1-4)

This application having been heard on 19.10.2011, the Tribunal on 11-11-2011 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant in this O.A is aggrieved by the refusal of the respondents to reckon the period he has worked as Senior Technical Assistant (STA) on deputation as regular service for the purpose of seniority and promotion and also by the promotion granted to the 5th respondent overlooking his seniority.

2. The applicant was initially appointed as Supervisor (Technical) at the Opto Electronic Factory in the Department of Defence (Production), Ministry of Defence, Dehradun, on 13.03.1989. Thereafter, he was first appointed on ad hoc basis on 29.11.1991 and later, on regular basis, on 20.05.1993 as Technical Assistant at Sagar Sampada Cell, Department of Ocean Development, Kochi. While working as Technical Assistant, he was selected and appointed as Senior Technical Assistant on deputation basis at Sagar Sampada Cell itself on 16.05.1996. Thereafter, he was appointed as Senior Technical Assistant on regular basis with effect from 02.12.1998 and is still continuing on that post. The request of the applicant to regularise his promotion to the post of Senior Technical Assistant with effect from 16.05.1996 did not yield any positive result. In the draft seniority list of Senior Technical Assistant dated 22.11.2007, the date of entry of the applicant to the cadre of Senior Technical Assistant was shown as 02.12.1998. Although he submitted his objection, the date of entry of the applicant in the cadre of Senior Technical Assistant was not corrected as 16.05.1996. In response to his representation, he finally received Annexure A-2 Office memorandum dated 03.10.2008 rejecting his request for correcting the date of entry as

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16.05.1996 to the cadre of Senior Technical Assistant. Meanwhile, Annexure A-1 order dated 08.12.2009 promoting the 5th respondent to the level of Scientist-B was issued. The 5th respondent had gone on deputation and for permanent absorption to another department. His name was also shown above the name of the applicant in the seniority list issued on 20.01.2010 as at Annexure A-19. Aggrieved, the applicant has filed this O.A for the following reliefs:

- (i) To call for the records relating to Annexure A-1 to A-20 and to quash Annexure A-2 being illegal, arbitrary and against the provisions of law;
- (ii) To quash A-1 and A-19 to the extent the 5th respondent is placed as senior to the applicant and promoted as Scientist Grade-B in preference to the applicant;
- (iii) To declare that the applicant is entitled to reckon his service as Senior Technical Assistant with effect from 16.05.1996 and to direct the respondents to reckon his seniority in the STA cadre with effect from 16.05.1996 and to grant all consequential benefits including arrears of salary and to disburse other financial benefits with 18% penal interest;
- (iv) 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
- (v) To grant the costs of this Original Application.

3. The applicant contended that the respondents ought to have counted his period of deputation and treated him as promoted to the post of Senior Technical Assistant with effect from 16.05.1996, the date on which he joined as STA on deputation basis. The posting of the applicant on deputation basis as well as on regular basis was in the same department without any change of duty. The appointment of the applicant as Senior Technical Assistant on deputation is an accepted mode of appointment and is to be treated as promotion when an official of the same Department is appointed. As per the



"composite method" shown in Annexure A-20, if the departmental candidate is selected for appointment to the post, the post is to be treated as having been filled by promotion. Therefore, the applicant is liable to be treated as posted on promotion on 16.05.1996 as Senior Technical Assistant and granted consequential benefits. No notice of reversion of the seniority of the applicant was given to him.

4. The respondents contested the O.A. In their reply statement, they submitted that the applicant was in the direct line of promotion (in the feeder cadre as TA) and that his case for considering transfer on deputation to the post of STA was done in consultation with the UPSC. His period spent in the grade of STA on deputation was also taken into consideration to consider his regular promotion to the grade of STA as the period spent by him in the grade of TA was only 4 years, 5 months and 17 days, falling short of the required 5 years of regular service. As per Annexure A-2, the service rendered on deputation cannot be considered for regular promotion. Accordingly, his eligibility for promotion to the post of Scientist-B starts from 02.12.1998 and not from 16.05.1996. For promotion to the post of Scientist-B, STAs with 8 years of regular service in the grade are eligible. On the crucial date of 01.01.2006, the applicant did not fulfil the eligibility criterion. Therefore, his name could not be considered by the DPC of the UPSC as per the Recruitment Rules. Therefore, none of the actions of the respondents are arbitrary, illegal or contrary to law. Through his Annexure A-18 representation dated 22.01.2009, the applicant did not contradict the view of the DoP&T on the issue of not considering the service rendered on deputation for regular promotion but had only requested for considering the continuous service from 16.05.1996 for regular increments in the grade of STA. The



representation of the applicant dated 05.12.2007 (Annexure R-11) did not dispute the seniority position of the 5th respondent. The composite method of recruitment is not applicable to the case of the applicant.

5. In the rejoinder, the applicant submitted that according to Para 6, Chapter 2 of Swamy's Complete Manual on Establishment and Administration (Annexure A-22), normally seniority will be from the date of absorption. However, if he had been holding the same or equivalent grade in the previous department, seniority will be from the date of deputation or the date of his regular appointment in the grade in his previous department, whichever is earlier. Therefore, the seniority of the applicant in the STA cadre is to be reckoned from 16.05.1996 and based on such seniority, he is entitled to be promoted to the post of Scientist-B in preference to the 5th respondent, who was appointed to the post of STA on 05.08.1996, later than the appointment of the applicant. As per the decision rendered by the Principal Bench of CAT in O.A. No. 1764 of 1995, *R.K. Sharma vs. Union of India*, the applicant is entitled to count his seniority in the post of Technical Assistant from 13.03.1989 onwards for promotion to the post of STA. Although he was not considered for promotion to the post of STA with effect from 13.03.1994, he is entitled to count his seniority from 16.05.1996 for further promotion to the post of Scientist-B. In the extract of important guidelines issued by the UPSC in Annexure A-20 it is stated that in cases where the field of promotion consists of only one post, the method of recruitment by deputation/promotion is prescribed so that the departmental officer is considered along with outsiders and that if the departmental officer is selected for appointment to the post, it is treated as having been filled by promotion. Therefore, the selection made by the UPSC to the post of STA on deputation with effect from 16.05.1996 is to

be treated as by promotion. The 5th respondent was recruited as STA in the Department of Ocean Development on 05.08.1996 on direct recruitment basis. It is not clear how the direct recruitment was made by the Department when the Recruitment Rules of STA clearly mention the method of recruitment as (i) 50% by promotion failing which by transfer on deputation and (ii) 50% by transfer on deputation. The NIOT, Chennai, has not taken prior approval for engaging the 5th respondent as System Administrator, as per the instructions contained in DoPT O.M. dated 20.01.1991 and 05.12/2005. He should have been treated as resigned from the Central Government service and joined the Autonomous Body. As a matter of fact, there were 7 posts when the Annexure A-1 was issued promoting 5 STAs to the grade of Scientist-B. For the above reason, the O.A. is liable to be allowed.

6. We have heard Mr. Shafik M.A, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC, appearing for the respondents and perused the records.

7. Para 6 of Chapter 2 - Seniority and Promotion - of Swamy's Complete Manual on Establishment and Administration reads as under :

“6. *Deputationist absorbed subsequently.*— Normally, the seniority will be from the date of absorption. However, if he had been holding the same or equivalent grade in the previous department, seniority will be from the date of deputation or the date of his regular appointment in the grade in his previous department, whichever is earlier.

(emphasis supplied)

The applicant, in the instant case, holds the same grade of Senior Technical Assistant while on deputation from 16.05.1996 onwards as well as on absorption on 02.12.1998 in the very same office of Sagar Sampada Cell,



Department of Ocean Development, Kochi. As the post is the same, duties are same and the organization is the same, the case of the applicant to count seniority from the date of deputation is unassailable.

8. Annexure A-20 is a copy of the instructions issued by the UPSC in respect of deputation/short term contract wherein 'composite method' of recruitment is described as under :

"2. Composite Method:

In cases where the field of promotion consists of only one post, the method of recruitment by "deputation (including short-term contract)/promotion" is prescribed so that the departmental officer holding the feeder post is considered along with outsiders who have applied for appointment on deputation basis. This method is known as the 'Composite Method'. If the departmental candidate is selected for appointment to the post, the post is to be treated as having been filled by promotion; otherwise the post is filled by deputation/contract for the prescribed period of deputation/contract at the end of which the departmental officer is again afforded an opportunity to be considered for appointment to the post.

3. xxxxx

3.1 xxxxx

3.2 xxxxx

3.3 When the 'Composite Method' of recruitment is prescribed for Group 'A' or Group 'B' post, i.e. the departmental candidate is to be considered along with the outsiders, the selection shall be made by the Commission only."

The above extract clarifies what was not clear in Annexure A-2 order "as to how he (applicant) was selected on the recommendation of the UPSC as in terms of Recruitment Rules, consultation with the UPSC is not necessary". Further, it clearly shows that the appointment of the applicant to the post of STA should have been treated as having been filled by promotion, and not on deputation basis. Annexure A-2 order is wide off the mark. Further, the statement therein that "service rendered on deputation cannot be



considered for regular promotion" is arbitrary and illegal, being contrary to Para 6 of Chapter 2 Seniority and Promotion of Swamy's Manual (supra).

9. In O.A. No. 36/2010, this Tribunal considered whether the period of deputation can be counted as regular service for further promotion in the transferred establishment and held as under :

6. Thus, even the past services in the parent department was required to be considered, provided the post they held was equivalent to the post in the transferred department. In this case, it is not necessary to extend the past service in the parent department as part of service rendered as deputationist since the applicants were deputationists working in the post of Assistant Compilers which is the feeder category for the post of Compilers and admittedly, if the period of service rendered as Assistant Compilers from the date of their deputation is reckoned they have completed 8 years of service as on the prescribed date, so necessarily they should be held to be qualified for further promotion as Compilers. In this case, there is no dispute that they have completed 8 years of service as Assistant Compilers for the post of Compilers. If so, we declare that they are entitled to be promoted as Compilers in accordance with law and we direct the respondents to consider them for promotion as Compilers and give them due promotion, in accordance with law, if they are otherwise eligible.

(emphasis supplied)

The above decision is applicable to the instant O.A.

10. The Apex Court in (1987) 4 SCC 5666, *K. Madhavan & Anr. vs. Union of India & Others*, held as follows :

"We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the

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post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See R.S. Makashi & Ors. v. I.M. Menon & Ors. [1982] 1 SCC 379; Wing Commander J. Kumar v. Union of India & Ors. [1982] 3 SCR 453."

11. The respondents submitted that the applicant was in direct line of promotion (in the feeder cadre as TA). But his case was considered 'transfer on deputation' to the post of STA, in consultation with the UPSC because he had spent only 4 years 5 months and 17 days in the grade of Technical Assistant, falling short of 5 years regular service for his regular promotion. But the stand of the respondents that the service rendered on deputation cannot be considered for regular promotion does not hold water in view of the settled law as above. Further, the submission of the respondents that "as the period spent in the grade of STA on deputation was also taken into consideration to consider his regular promotion to the grade of STA as the period spent by him in the grade of TA was only 4 years, 5 months and 17 days, falling short of the required 5 years of regular service" goes against the stand of the respondents in Annexure A-2 order.

12. We find that the contention of the respondents that the 'Composite Method' of recruitment is not applicable to the case of the applicant, is not tenable in the light of the guidelines of the UPSC.

13. We do not consider the instant case fit for allowing penal interest at 18%, as prayed for by the applicant.

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14. We do not find it necessary to go into the question of legality of the appointment of the 5th respondent as Scientist-B, as out of 7 posts of Scientist-B available, only 5 posts have been filled up when the Annexure A-1 order was issued and, therefore, in one of the vacant posts, the applicant can be accommodated granting seniority to the applicant in the grade of STA with effect from 16.05.1996.

15. In the light of the above discussion, the O.A is allowed as under.

16. Annexure A-1 and Annexure A-19 orders to the extent they are prejudicial to the applicant are quashed. Annexure A-2 order dated 03.10.2008 is also quashed. We declare that the applicant is entitled to reckon his service as STA with effect from 16.05.1996 for the purpose of seniority and direct the respondents to grant him arrears of salary restricted to 3 years prior to the date of filing this O.A and afterwards within a period of 60 days from the date of receipt of a copy of this order. No order as to costs.

(Dated, 11th November, 2011)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

CVR.