

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. 254/93

Thursday, the eleventh day of November, 1993

MR. N. DHARMADAN MEMBER (JUDICIAL)

MR. S. KASIPANDIAN MEMBER (ADMINISTRATIVE)

M.K. Kuttykrishnan Nair  
S/o late M.A.Krishnan Nair  
Technical Assistant T-II-3  
Central Institute of Fisheries & Technology  
Matsyapuri P.O. Cochin-682 029

Applicant

By MR. P.V. Mohanan

vs.

1. The Director General,  
I.C.A.R. Krishi Bhawan,  
Dr. Rajendra Prasad Road,  
New Delhi-1

2. The Director,  
Central Institute of Fisheries &  
Technology, Matsyapuri P.O.  
Cochin-682 029

Respondents

By MR. P. Jacob Varghese for R-2

ORDER

N. DHARMADAN

The applicant is coming for the third time. In this application, he is limiting his prayer for setting aside Annexure A-IV and also for issue of a direction to the respondents to pay the arrears of pay and allowances to the applicant in the grade of T-II-3 w.e.f. August, 1989 based on the direction contained in the judgment passed by this Tribunal on the earlier original application filed by the applicant.

2. When the applicant originally filed O.P. No. 8178/87, which was transferred to this Tribunal, and disposed of giving No. TAK 593/87, as per Annexure-I judgment giving certain directions for convening the DPC. The department filed SLP against the same and it was dismissed. Considering the directions in Annexure-I judgment, a DPC meeting was held but there was no recommendation <sup>by</sup> granting promotion to the applicant to T-II-3. Applicant filed the second original

application O.A. 189/91 which was allowed as per Annexure-III judgment with strong observation regarding the delay in convening the DPC. The tribunal also observed that the members of the DPC did not consider the applicant in the proper perspective. After the second judgment, a clarification was sought by the Department and it was disposed on 30.4.92. Another DPC was convened on 30.7.92 which recommended the applicant's case for promotion. Accordingly, he was given promotion notionally w.e.f. 20.7.80. Thereafter, when he claimed consequential benefits and arrears of pay, it was dismissed by Annexure-IV order. The penultimate sentence in the order is attacked by the applicant, which reads as follows:

"... He will however be entitled for arrears of pay and allowances only from 30.7.92."

3. The learned counsel for applicant, Shri P. V. Mohanen, submitted that the restriction on grant of pay and allowances from 30.7.92 cannot be sustained. Denial of the legal benefit which accrued in favour of the applicant on the basis of the first judgment is malafide. If the DPC was convened pursuant to the judgment dated 27.4.89, the applicant would have got the benefit. The review DPC recommended his case on 30.7.92. In that background, the applicant is claiming backwages at least from the date of the first DPC. This submission is made by the learned counsel for the applicant placing reliance on the various observations in the second judgment. He also submitted that due to administrative delay and latches, the applicant was wrongly denied the benefit of pay and allowances which cannot be upheld accepting the contentions of the respondents. In support of his argument, he has cited the following decisions:

i) 1990 (1) SC 2010, M.P. Jr. Engineers' Association Sangarsh Samith & others Vs. State of Madhya Pradesh and another

ii) 1993 23 ATC 494, Deb Kumar Gupta vs Union of India

iii) 1984 KLT 59, Philemina vs. State of Kerala

iv) 1984 KLT 141, Rajappan Nair vs. State of Kerala,

v) 1984 KLT 403, Kunjumonamed vs State of Kerala.

4. According to the learned counsel for the applicant, all the cases cited above support his case that he is entitled to back wages from August, 1989.

5. The learned counsel for respondents, Shri P. Jacob Varghese, filed a reply and submitted that there is absolutely no administrative delay. After the earlier judgment, they have taken the matter with the Supreme Court; when the SLP was dismissed, DPC was convened which considered the case of the applicant and decided the question on the basis of the available materials available. The applicant again challenged the decision of the authority; but that decision was also not upheld by the Tribunal. So, they convened a properly constituted review DPC on 20.7.92 which recommended promotion of the applicant and accordingly, the applicant was promoted. The applicant was eligible for pay and allowances from that date. However, in view of the objection raised by the applicant, the question has been referred to the learned counsel for the Institute for his legal opinion and the Institute is awaiting the legal opinion. It is further submitted that the final decision with regard to the claim of the applicant will be decided in a fair and proper manner by the Director after getting the legal opinion.

6. In the light of the statement made by the learned counsel for respondents, we are satisfied that it is *and this is not the right time for* premature for us to take a decision. Of course, there is some force in the contentions raised by both sides. But, a proper evaluation of the facts and circumstances in the light of the observations of the second judgment by this Tribunal is necessary for taking a final decision on the issue that is presented before us for consideration. We

are not ventured to attempt a decision in this case particularly when the matter has already been referred to the legal opinion and pending consideration. It is also submitted at the bar that the Director will consider the case with open mind and take a fair decision after getting the legal opinion in the matter.

7. In the light of the above discussion, we are of the view that the original application can be closed with the observation that a decision will be rendered by the Director in accordance with the statement made by the learned counsel for the respondent at the bar.

8. The application is closed with the above observation.

9. There shall be no order as to costs.

*S. Kasi Pandian*

(S. KASIPANDIAN)  
MEMBER (ADMINISTRATIVE)

*N. Dharmadan*  
11.10.92

(N. DHARMADAN)  
MEMBER (JUDICIAL)

KMN