

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 281 of 2006

*Thursday*, this the 28<sup>th</sup> day of February, 2008

**C O R A M :**

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

T.A. Sajive,  
Chief Engineer Grade II,  
Integrated Fisheries Project,  
Now transferred to Fishery Survey of India,  
Chennai, Residing at Thisseri House,  
Malipuram, Ernakulam District.

...

Applicant.

(By Advocate Mr. T.A. Rajan)

v e r s u s

1. Union of India represented by  
Secretary to the Government,  
Ministry of Agriculture,  
Department of Animal Husbandary,  
Dairying & Fisheries, New Delhi.
2. The Director,  
Integrated Fisheries Project,  
Kochi - 16.
3. The Director General,  
Fishery Survey of India,  
Mumbai.

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Respondents.

(By Advocate Mr. George Joseph, ACGSC)

**O R D E R**

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The short question involved in this case is – if a post is vacant and eligible candidate is available for promotion to that post, whether the respondents are duty bound to fill up the post. In other words, in not filling up the post, whether any vested right of the applicant gets infringed, warranting judicial interference.



2. Brief facts: The applicant was initially appointed as Chief Engineer Gr. II in the Fishery Survey of India (FSI) in Marcy, 1986. Later on, he was promoted on ad hoc basis as Chief Engineer Grade I w.e.f. 3<sup>rd</sup> November, 1986. He had at that time applied for the post of Chief Engineer Gr. II in the Integrated Fisheries Project, Kochi, through UPSC and was selected for the said post, which he had assumed in 1997. The applicant was in the third position in the seniority of Chief Engineer Gr. II. In the Integrated Fisheries Project two posts of Chief Engineer Gr. II were upgraded as Chief Engineer Gr. I vide Annexure A-6 order dated 6<sup>th</sup> March, 1999. However, Recruitment Rules in this regard were not framed. Hence at that time none was promoted to the said post. Recruitment Rules were framed only as late as 2<sup>nd</sup> November, 2002 followed by Amendment dated 30<sup>th</sup> August, 2004. Pending framing of recruitment Rules, the senior most of the Chief Engineer was promoted on ad hoc basis, which he held till his superannuation in May, 2005.

3. While so, three fishing Vessels of the Integrated Fisheries Projects were transferred to the Fisheries Survey of India as per certain policy decision and there remained only one fishing Vessel in the Integrated Fisheries Project. For one vessel, the requirement was one Chief Engineer Gr. I. In other words, by transfer of vessels to the Fisheries Survey of India, requirement of the second Chief Engineer Gr. I was no longer there. The second post of Chief Engineer was, therefore, deemed to have been surrendered. The lone Chief Engineer Grade I Post, occupied by the senior most of the Chief Engineer Gr. II became vacant w.e.f. 01-06-2005. Though a person senior to the applicant was available, he was not inducted.



4. A policy decision at appropriate level was taken to transfer the lone vessel of the Integrated Fisheries Project to Central Institutes and Fisheries Survey of India. Some more sections were also likewise transferred. The post of Chief Engineer Gr. I attached to the vessel was also shifted to the CIFNET. The applicant who is in the staff strength of I.F.P. Could not therefore, be considered for promotion to the post of Chief Engineer Gr. I. Applicant penned two representations, Annexure A-12 and A-13 for consideration of his case for promotion to the post of Chief Engineer Gr. I at CIFNET. There was no response to the same.

5. Aggrieved by the above situation, the applicant has moved this OA praying for the following:-

(i) To declare that non consideration of the applicant for promotion to the post of Chief Engineer Grade I as illegal;

(ii) To declare that the applicant is entitled to get promotion to the post of Chief Engineer Grade-I with effect from 1.6.05 consequent to the retirement of Shri K.U. Asokan, Chief Engineer Grade-I;

(iii) To direct the respondents to consider and promote the applicant to the post of Chief Engineer Grade-I which arose with effect from 1.6.05 consequent to the retirement of Shri K.U. Asokan with all consequential benefits.

(iv) To direct the first and second respondents to consider Annexure A12 and A13 representations without further delay.

6. Respondents have contested the OA. According to them, when the lone vessel had been transferred and some more sections too had been shifted, there being no post of Chief Engineer Gr. I available now with I.F.P., the



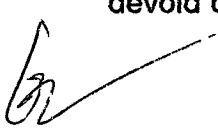
question of promoting the applicant to the post of Chief Engineer Gr. I does not arise.

7. Applicant filed a rejoinder wherein he has contended that one Shrimati, Head-clerk stood promoted even after such shifting. Respondents have explained the case of that individual in their additional reply.

8. Counsel for the applicant argued that when his senior could be promoted on ad hoc basis, after the retirement of the said senior and another senior, it was the applicant who was the senior most and as such, he ought to have been considered for promotion from 01-06-2005.

9. Counsel for the respondents relied upon the contents of the counter.

10. Arguments were heard and documents perused. Transfer of vessel and some sections to CIFNET is a policy decision. As such, the same cannot be subject to judicial review. The consequence of such transfer is that the post attached to the vessel also goes along with the vessel and thus, as on date there is no post of Chief Engineer Gr. I available with the I.F.P. and it was precisely for that reason that the applicant could not be considered for promotion. Had such a shifting not taken place, perhaps the applicant's could possibly be having some right to agitate against his non consideration. Here again, his claim could be justified only for prospective promotion and not retrospective. It is not possible to position him as Chief Engineer either for the past when the vacancy was available nor for the future, when no vacancy is available. The OA is thus, devoid of merits and is, therefore, dismissed.

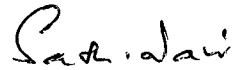


11. No order as to costs.

(Dated, the 28<sup>th</sup> February, 2008)



(Dr. K B S RAJAN)  
JUDICIAL MEMBER



(SATHI NAIR)  
VICE CHAIRMAN

CVT.