

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 299 of 2011

Tuesday, this the 16th day of February, 2012

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Nirmal Mathews,
S/o. Late M.V. Mathews,
Bosun (T-5) Retired,
Marine Fisheries Research Institute, Kochi,
Santhosh Bhawan,
Kadavanthra P.O., Kochi -20,
Now at House No. 45717,
Kensington Street, Utica, Detroit City,
Michigan State – 483175941,
United States of America

... Applicant.

(By Advocate Mr. P.K. Madhusoodhanan)

v e r s u s

1. The Director,
Central Marine Fisheries Research Institute (CMFRI),
(Indian Council of Agricultural Research),
P.B. No. 1603, Ernakulam North P.O.,
Kochi – 682 018
2. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, Dr. Rajendra Prasad Road,
New Delhi – 110 001
3. Indian Council of Agricultural Research,
Represented by its Secretary, Krishi Bhavan,
New Delhi
4. Deputy Secretary (Technical Service),
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi – 110 001
5. Union of India, Represented by its Secretary,
Ministry of Agriculture, New Delhi – 1
... Respondents.

(By Advocates M/s. Varghese & Jacob)



This application having been heard on 06.02.2012, the Tribunal on
16-02-12 delivered the following:

ORDER

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

The applicant in this O.A. while working as Bosun (Technical officer) Grade T-5 in category II in Central Marine Fisheries Research Institute (CMFRI), Kochi, took voluntary retirement from service on 15.07.2010. While in service, he had represented vide letter dated 19.09.2008 for promotion to T-6 Grade in Category III. As it was not considered, he had approached this Tribunal in O.A. No. 552/2009 which was disposed of with a direction to the respondents to consider his representation dated 19.09.2008 vide orders at Annexure A-13 dated 07.06.2010 and at Annexure A-14 dated 05.08.2010. In compliance, the respondents have issued Office Memorandum dated 11.10.2010 (Annexure A/15) informing him that he is not eligible for promotion to T-6 Grade under the Technical Service Rules (TSR) and that on occurrence of vacant post of Skipper Grade-I at CMFRI in the pre-revised pay scale of Rs. 10000-15200, he may be considered for the post in accordance with the prescribed Recruitment Rules. Aggrieved, he has filed this O.A for the following reliefs:

- (i) Set aside Annexure A-15;
- (ii) Declare that the applicant is eligible and entitled to be considered for assessment promotion to grade T-6 in Category-III in accordance with law and promoted to the post in T-6 Grade with all attendant benefits arising therefrom;
- (iii) Issue necessary directions to the respondents to grant the applicant assessment promotion to T-6 grade in Category III in accordance with law and grant and pay all benefits including monetary arrears within a time limit to be fixed by this Hon'ble Tribunal;



(iv) Issue necessary directions to the respondents to refix his pay and pension benefits on promotion to T-6 grade and grant and pay all monetary benefits arising therefrom at the earliest;

(v) Award costs of these proceedings; and

(vi) Grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper.

2. The applicant contended that he was not given any promotion for more than 18 years due to the default of the 3rd respondent in not drawing up qualification for vessel staff. There is no justification in not granting him T-6 Grade on completion of 5 years of service in T-5 Grade as one Shri B. Ramesh, T-5 Grade, in CMFRI had been granted promotion vide Office Order dated 25.11.2000 by the first respondent. In the absence of prescription of qualifications for vessel staff in Annexure A-2, the respondents should have followed the then existing TSR till 03.02.2002 wherein qualifications for vessel staff have been prescribed. The applicant was not in a position to opt for the old TSR or for the new TSR as he was not aware which was more beneficial to him. In fairness and interest of justice, the respondents should have allowed sufficient time as sought for by the applicant. The qualifications from a recognised University prescribed in Annexure A-2 for direct recruitment to Category III are not available in India or abroad as far as the vessel staff are concerned.

3. The respondents contested the O.A. as under. As per the old TSR, the applicant possesses necessary qualifications for Category III for considering him for promotion to T-6 Grade after 12 years service in T-5 Grade, i.e. 01.07.2003. The new TSR came into force on 03.02.2000 prescribing Bachelor's degree and Master's degree in the relevant field for

A handwritten signature or mark, possibly a 'J', is located at the bottom center of the page.

Categories II and III respectively. The applicant who is having only SSLC qualification was therefore, not eligible for promotion to T-6 Grade. The applicant in his own wisdom has not exercised the option for the old TSR effective prior to 03.02.2000. Therefore, he was deemed to have opted the new TSR. The applicant has already been given eligible promotion/ advance increments due to him upto T-5 Grade. As the applicant does not possess Bachelor's degree, he was not eligible for merit promotion to T-6 Grade as per the new TSR effective from 03.02.000. A second opportunity was given to him for opting either the old TSR or the new TSR within 30 days vide letter dated 19.10.2006. His request for granting extension of time was rejected vide memo dated 15.12.2006 as there was no provision for granting extension of time. The applicant's case can be considered only on the basis of the revised Recruitment Rules framed exclusively for vessel staff. As conveyed vide Annexure A-15 Memorandum dated 11.10.2010, on occurrence of vacant post of Skipper Grade-I at CMFRI in the pre-revised pay scale of Rs. 10000-15200 he could have been considered for this post in accordance with the prescribed Recruitment Rules. He could also apply for the post of Skipper on deputation basis with reference to notification of other Institutes for filling up the post of Skipper on deputation. As he has already retired from service on 15.07.2010, he is not eligible for further promotions. As per the revised rules for vessel staff vide circular dated 19.08.2008 (Annexure A-11), the Recruitment Rules for the post of Skipper Grade-II is applicable only to CIIFT, Kochi, not for other Institutes. Therefore, the respondents are not in a position to consider him for promotion to the post of Skipper Grade-II, which is a post of CIIFT, Kochi.

4. In the rejoinder statement, the applicant submitted that his voluntary

A handwritten signature in black ink, appearing to be a stylized 'F' or a similar character.

retirement from service cannot be a reason to deny benefits legally due to him by the respondents.

5. We have heard Mr. P.K. Madhusoodhanan, learned counsel for the applicant and Mr. Varghese M Easo for M/s. Varghese & Jacob, learned counsel appearing for the respondents and perused the records.

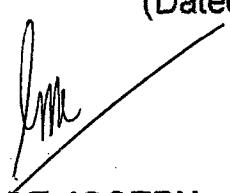
6. The direction of this Tribunal as per orders at Annexure A-13 and Annexure A-14 was to consider the representation of the applicant dated 19.09.2008. The respondents have considered it and conveyed the decision as per Annexure A-15. The applicant does not have a vested right to promotion. His right is limited to consideration for promotion as per the Recruitment Rules. As per the old TSR, he would have been considered for promotion to T-6 Grade after 12 years of service in T-5 Grade, i.e. 01.07.2003, if there was a vacancy and if he had opted for the old TSR. He was given an opportunity to opt either for old TSR or new TSR in the year 2000 and later, a second opportunity in 2006. The applicant wanted more time to opt for the rules which rules were more beneficial to him and did not make up his mind within the stipulated time and missed out the second chance also. A person with SSLC qualification should have seen the writing on the wall that higher qualifications are prescribed in the new TSR generally. As he failed to exercise his option, he was brought under the new TSR. The failure to utilise the 2nd chance given in the year 2006 to opt for the old TSR definitely goes against the applicant. The blame for the failure to opt for the old TSR cannot be put on the shoulders of the respondents. The respondents have considered the representation of the applicant as per rules. Even before knowing the fate of his representation the applicant had

voluntarily retired on 15.07.2010 and went abroad. We do not find any arbitrariness or illegality on the part of the respondents in the impugned order calling for the interference by this Tribunal.

7. The applicant submitted that one Shri B. Ramesh was granted promotion to Category III in T-6 Grade as per the order dated 25.11.2000 by the 1st respondent. That promotion was given in the year 2000 when the old TSR was in force. Had the applicant opted for the old TSR, he could have been considered for promotion in his turn. Had he continued in service, he could have been considered for the post of Skipper Grade-I as and when vacancy arises. He could have also applied for the post of Skipper on deputation basis with reference to notification of other Institutes for filling up the post of Skipper on deputation. Now that he has taken voluntary retirement from service with effect from 15.07.2010, he is not eligible for promotion or deputation. The allegation that he has been discriminated against, denying him equality before law and equality of opportunity enshrined in Articles 14 and 16(1) of the Constitution of India is not thus proved.

8. In view of the above, the O.A. is dismissed with no order as to costs.

(Dated, this the 16th February, 2012)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE PR RAMAN
JUDICIAL MEMBER

CVR.