

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 309/2000

Wednesday this the 27th day of March, 2002.

CORAM

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

P.K.Krishnan Kutty
S/o O.P.Kandai
Padoor House, Manakody P.O.
Thrissur District.
Presently working as
Lab Attender Grade II, CPCRI
Kannara, Thrissur District.

...Applicant.

(By advocate Mr.Jijo Paul)

Versus

1. The Central Plantation Crops Research Institute represented by the Director CPCRI, Kasargod - 671 124.
2. Asstt. Administrative Officer CPCRI, Kasargod.
3. Scientist in charge CPCRI Research Centre Kannara Unit, Kannara Thrissur District.
4. Union of India represented by The Secretary Ministry of Agriculture New Delhi.
5. A.Sanjeeva JTA (T-1), CPCRI Research Centre Appangala, Karnataka State.
6. K.Raghavan JTA (T-1), Research Centre CPCRI, Kidu, Karnataka State.
7. M.V.Sreedharan JTA (T-1), CPCRI Research Centre Hirehalli, Karnataka.
8. V.P.Joy JTA (T-1), CPCRI Kasargod. ... Respondents

(By advocate Mr.C.N.Radhakrishnan R1-4)

The application having been heard on 27th March, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant filed this OA aggrieved by the action of the respondents in promoting junior to the applicant in preference to him and thereby denying him promotion legitimately due to him. He sought the following reliefs through this OA:

- i. To declare that the applicant is entitled to be promoted to the post of Junior Technical Assistant with effect from 28.12.99.
- ii. To direct the respondents to promote the applicant to the post of Junior Technical Assistant with effect from 28.12.99.
- iii. To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- iv. Quash the office order No.F.4(13/99-Estt.I) dated 23.12.99 promoting respondents 5 to 8 to the post of Junior Technical Assistant.

2. According to the averments of the applicant in the OA, he joined the service of the first respondent on 27.9.86 in the Head Office at Kasargode as Laboratory Attender (Supporting Staff Gr.II). By A-2 order dated 15.11.89 he was declared to have completed the probation period satisfactorily on 27.9.88. Applicant claimed that as per Rule 7.1 of the I.C.A.R. Technical "Service Rules" 33% of the vacancies in grade T-1 of category-I were to be filled up by promotion of persons in supporting service possessing qualifications prescribed for category-I. He claimed that he had passed SSLC and was eligible to be promoted to the post of Junior Technical Assistant falling in group I (Fieled/Farm Technicians). He was expecting that he would be granted promotion by the respondents. In 1992-94, 7 of the juniors were promoted. He represented against the same by A-4 to which he received a reply that the DPC had considered his case and he was found not fit for promotion on the basis of his



performance as SS Gr.I as reflected in his Confidential Reports by note dated 26.8.97, copy of which was not handed over to him. He alleged that the then Scientist in Charge had some illwill towards him. An enquiry was also conducted against an alleged incident which took place at that time. In the meanwhile he was given a grade promotion and was promoted as Lab. Attender Gr.II by A-5 order dated 24.9.98. Subsequently by A-6 order dated 1.11.99, on satisfactory completion of the probation, he was appointed in substantive capacity as SS Grade I Laboratory Attender with effect from 28.9.88. By Office Order dated 23.12.99 some of his juniors - respondents 5 to 8 - were promoted to the post of Junior Technical Assistant. He claimed that his exclusion from the said promotion was arbitrary and illegal. As per A-7 seniority list drawn up for the purpose of promotion to posts including Junior Technical Assistant, the applicant was at Sl.No.4 and those who were promoted were at Sl.Nos. 10,11,12 and 13. According to him, even if seniority cum merit was the criteria for promotion, applying the dictum laid down by the Hon'ble Supreme Court in B.V.Sivaiah & others Vs. V.K.Addanki Babu & others JT 1998 (5) SC 96 [1998 (6) SCC 720] and other cases, given the minimum necessary merit requisite for efficiency of administration the senior even though less meritorious shall have priority. He claimed that he preferred A-8 representation before the Director. Apprehending that he would not get justice, he approached this Tribunal through this OA.

3. Respondents filed reply statement resisting the claim of the applicant. It was submitted that promotion to the post of JTA(T-1) was by selection and the applicant had no statutory

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right for promotion merely on the basis of his seniority in the grade of Supporting Staff Grade I. Though 33.3% of vacancies in the grade of JTA was to be filled up by promotion of persons in the Supporting Staff service possessing qualifications prescribed for category I under Technical Service Rules, it was on the basis of the suitability to be assessed by a duly constituted Selection Committee. The DPC took into account the seniority cum fitness of the candidate. The DPC duly constituted for evaluating the fitness of eligible candidates for promotion to the post of JTA had considered the suitability of the applicant and did not recommend him for promotion to the post of JTA. There was no irregularity in the mode of selection. The proceedings of the DPC dated 25.10.99 would be produced for perusal of this Tribunal. The conclusion of the DPC was on the basis of the Annual confidential Reports of the applicant for the preceding 5 years, qualification and seniority. The decision of the DPC was fair and free from any bias. On verification of the records available with respondents 1-3, A-8 representation purported to have been submitted by the applicant had not been received. Moreover the said representation had not been sent through proper channel. Applicant's performance during the period 1.4.92 to 31.3.93 was not satisfactory and the applicant was informed of the same through confidential letter dated 23.6.93. Even though given an opportunity, the applicant did not file any representation against the above mentioned adverse remarks. The OA was devoid of merit and was liable to be dismissed. Respondents also produced the office order dated 23.12.99.

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4. Even though notice was issued to private respondents 5 to 8, neither they were represented nor they filed reply statements.

5. Heard the learned counsel for the parties. Learned counsel for the respondents also produced the DPC proceedings as committed in the reply statement.

6. On a careful consideration of the submission of the learned counsel and the rival pleadings and a perusal of the documents including the DPC proceedings produced by the counsel for the respondents, we find that the main ground on which the applicant had challenged his non selection and sought the reliefs in the OA is stated in para 12 of the OA which reads as follows:

"Even if seniority-cum-merit is the criteria for promotion, applying the dictum laid down by the Hon'ble Supreme Court in B.V.Sivaiah & Others Vs. V.K.Addanki Babu & Others JT 1998 (5) SC 96 [1998 (6) SC 720] and other case, given the minimum necessary merit requisite for efficiency of administration the senior even though less meritorious shall have priority."

7. On a perusal of the DPC proceedings, we find that no criteria is laid down by the DPC for conducting the proceedings. Even though in the statement attached to the proceedings certain "indexes" and "characters" had been adopted with certain marks by the DPC, no authority for adopting the said "indexes" and "characters" had been stated therein. It had also not been brought out anywhere in the proceedings as to what is the bench mark prescribed for the selection. When a post is to be filled up on selection basis, it is on the basis of the candidates appearing for selection fulfilling certain prescribed standards bench mark. Once a person fulfills the prescribed standard, all

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those who satisfy the prescribed standard will be arranged in the order of seniority. From a perusal of the DPC proceedings, we are unable to make out whether there was any prescribed standard at all.

8. Further in the reply statement an averment was made that the conclusions of the DPC was on the basis of the Annual Confidential Reports of the applicant for the preceding 5 years whereas on a perusal of the DPC proceedings, we find that the Confidential Reports from 1992-93 onwards had been considered for a period of 5 years i.e upto the year 1996-97 whereas the DPC was conducted on 25.10.99. No reason had been stated in the DPC proceedings as to why the Confidential Reports of the 5 years from 1992-93 onwards to 1996-97 only had been taken and not the 5 years up to the year 1998-99 when the DPC was conducted in October, 1999.

9. While carrying out judicial review, Courts/Tribunals do not act as appellate authority over the selections conducted by a duly constituted DPC. In judicial review, Courts/Tribunals are more concerned with the decision making process rather than the decision itself. As we find that the decision making process in this particular case is without any basis, we have no other alternative than to set aside and quash the promotions made pursuant to the DPC proceedings held on 25.10.99. Accordingly we set aside and quash the office order No.4(13)/99-Estt.I dated 23.12.99 (copy of which was produced by the respondents as document pursuant to the order of this Tribunal in MA 1056/2000). Respondents are further directed to constitute a review DPC to

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consider the five candidates considered by the DPC held on 25.10.99 and conduct the DPC proceedings in accordance with law to prepare the select list for the post of JTA.

10. The OA stands disposed of with above directions/orders in the circumstances leaving the parties to bear their respective costs.

Dated 27th March, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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APPENDIX

Applicant's Annexures :

1. A-1 : True copy of the office order dt.25.10.86 No.F.4(114)/75/Estt./2712.
2. A-2 : True copy of the office order No.F.4(13)/38.Estt. dt.15.11.89.
3. A-3 : True copy of the Seniority list dt.1.1.91.
4. A-4 : True copy of the representation submitted by the applicant dt.24.5.97.
5. A-5 : True copy of the office order No.F4.(13)89/Estt.) dt. 24.9.98.
6. A-6 : True copy of the office order No.F.4(13)99-Estt.I dt. 1.11.99.
7. A-7 : True copy of the draft seniority list dt.1.1.96.
8. A-8 : True copy of the representation submitted by the applicant dated, Nil.

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