

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.314/97

Wednesday, this the 26th day of August, 1998.

CORAM:

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

P Thaha Haji,
Senior Fisherman,
Fisheries Unit,
Kilton,
U.T. of Lakshadweep.

- Applicant

By Advocate Ms VP Seemanthini.

Vs

1. U.T. of Lakshadweep Administration,
represented by its Administrator,
Kavarathi.

2. The Director of Fisheries,
U.T. of Lakshadweep,
Kavarathi.

- Respondents

By Advocate Mr PR Ramachandra Menon, ACGSC

The application having been heard on 26.8.98, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant while working as a Fisherman in the Fisheries Unit under the Lakshadweep Administration was promoted as Pablo Boat Driver on ad hoc basis. He submits that he was continuously working as Pablo Boat Driver in a regular post from June 1983 onwards. Meanwhile by A-4 dated 27.12.88 the applicant was promoted as Senior Fisherman in the scale of Rs.950-1400. Applicant is aggrieved by the fixation of pay in the scale of Senior Fisherman. He contends that the fixation of pay under F.R.22-I(a)(1) should have been based on the pay he was drawing in the post

of Pablo Boat Driver. Instead his pay as Senior Fisherman was fixed on the basis of his pay in the grade of Fisherman. Applicant represented in this behalf by A-6 representation dated 1.2.89 and by A-7 orders it was directed that his pay as Pablo Boat Driver be protected in his post of Senior Fisherman and 5 promotion increments were sanctioned in the post of Senior Fisherman under F.R.27 raising his pay from Rs.970 to Rs.1070 per month with effect from 19.1.89. Applicant represented further and by A-9 order dated 1.11.96 he was informed that while working as Pablo Boat Driver on ad hoc basis he was promoted and posted as Senior Fisherman and his pay was fixed accordingly in the post of Senior Fisherman. A-9 further stated that his promotion to the post of Pablo Boat Driver was on ad hoc basis and there was no lien to him till he gets a regular promotion to the post of Senior Fisherman. Applicant is aggrieved by this rejection of his request and prays that A-9 be quashed. He contends that he was the seniormost person holding the feeder category post of Fisherman possessing all the qualifications prescribed for holding the post of Pablo Boat Driver, that his appointment to the Pablo Boat Driver post was to a regular vacancy and that he has been working in that regular post without any break from March 1983 to 1989. He had not asked for promotion as Senior Fisherman and it has been done for purely administrative reasons for which he should not be penalised. A regular post will never become an ad hoc one merely because of the fact that in the appointment order a word ad hoc is shown. According to the decisions of the Supreme Court, having worked in the ad hoc post for more than six years he should be treated as being appointed on a regular basis with consequential benefits. Applicant also prays for a declaration that he is entitled to get a higher scale of pay than that of a Pablo Boat Driver in the promotion post of Senior Fisherman in the light of A-4 and A-5 orders with a

corresponding direction to the respondents to fix the salary of the applicant with effect from 19.1.89 as higher than that of Pablo Boat Driver and to pay him the arrears with 12% interest.

2. Respondents have submitted that applicant was not promoted on a regular basis to the post of Pablo Boat Driver. The DPC was held as seen from R.2 for considering persons for promotion to the post of Pablo Boat Driver and applicant was not found fit though he was considered along with others. The DPC proceedings were not subject to any challenge so far and it cannot be challenged at this distance of time. Meanwhile, the recruitment rules R.3 were issued which provide for promotion of Fisherman to the post of Senior Fisherman. Applicant who was holding a lien in the post of Fisherman was therefore considered by a DPC and found fit for promotion as Senior Fisherman. Since there is no channel of promotion from the post of Pablo Boat Driver to that of Senior Fisherman the pay of the applicant in the post of Senior Fisherman cannot be fixed on the basis that he has been promoted from the post of Pablo Boat Driver.

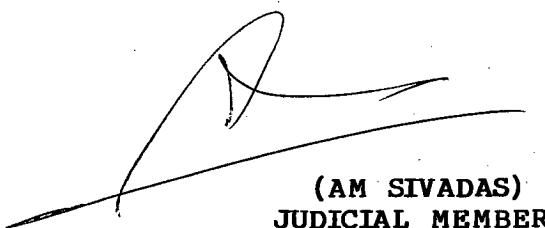
3. The claim of the applicant is for fixation of pay under F.R.22-I(a)(1) on the basis that he was promoted as Senior Fisherman from the post of Pablo Boat Driver. It is seen that F.R.22-I(a)(1) specifies that the initial pay in the time scale of the higher post has to be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more. Applicant has not been holding a regular post of Pablo Boat Driver. He was found unfit for that post by a DPC. In fact if he was holding the post of Pablo Boat Driver on regular basis he was not eligible to be considered for promotion as Senior Fisherman nor could he have been promoted to the post of Senior Fisherman. It was only in his capacity as a Fisherman that he

could have been considered and promoted to the post of Senior Fisherman. Applicant also has accepted the promotion and has been working as Senior Fisherman ever since 1988. Applicant submits that a number of representations have been made in this behalf but they do not alter the position that the applicant was promoted from Fisherman to the post of Senior Fisherman. Therefore his fixation of pay under F.R. on the basis of the pay he was entitled to draw as Fisherman which is the lower post regularly held by him is in order. However, such fixation resulted in adverse consequences to the applicant in that the pay so fixed was only Rs.970 as against the pay of Rs.1070 per month he had last drawn as Pablo Boat Driver. This grievance of the applicant was considered and was set right by A-7 orders under which his pay in the ad hoc post of Pablo Boat Driver was protected in the promoted post of Senior Fisherman. We do not see anything wrong in the action taken by the respondents.

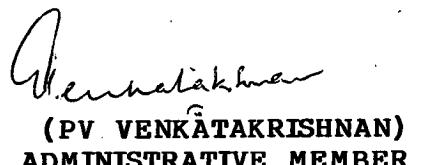
4. Learned counsel for applicant cited M.A.Rasheed Siddiqui Vs Union of India and others, (1994) 28 ATC 614(CAT). That is a case in which two promotions in the regular channel of promotion were considered, and where the intermediate promotion was temporary and ad hoc and on an officiating basis. There is no case that the applicant was not eligible for the intermediate promotion. Here the promotion was not from the post of Pablo Boat Driver nor was the applicant fit for that post. The case cited does not apply in this case.

5. Application is accordingly dismissed. No costs.

Dated, the 26th August, 1998.



(AM SIVADAS)
JUDICIAL MEMBER



(P V VENKATAKRISHNAN)
ADMINISTRATIVE MEMBER

LIST OF ANNEXURES

1. Annexure A4: True copy of the Promotion Order No. F.No.1/T0/87-FY dated 27.12.88 issued by the 2nd respondent to the applicant.
2. Annexure A5: True copy of the Office Memmorandum No.F.No.1/9/85-FY/124 dated 17.1.89 issued by 2nd respondent to the applicant.
3. Annexure A6: True copy of the representation dated 1.2.1989 submitted before the 1st respondent by the applicant.
4. Annexure A7: True copy of the proceedings No.F.No. 40/2/81-FY/1764 dated 31.7.1989 issued by the 1st respondent to the applicant.
5. Annexure A9: True copy of the Office Memmorandum No.FNo.2/5/75-FY-2105 dated 1.11.1996 issued by the 2nd respondent to the applicant.
6. Annexure R2: True copy of the Proceedings of the Departmental Promotion Committee dated 29.12.86 F.No.5/86/Fisheres(DPC).

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