

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION ..

21.2.1990

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN
AND

HON'BLE SHRI A.V.HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.323/89

Smt. Annamma Mathew ... Applicant

Vs.

1. Indian Council for Agricultural Research,
represented by Secretary
to Council, New Delhi.

2. The Director, C.I.F.T.,
Cochin.

3. Shri T.S.Gopakrishna Iyer,
Scientist, C.I.F.T.,
Cochin.

4. Shri Vasudevan Nair. K.,
Technical Officer-T5,
C.I.F.T. Cochin.

5. Union of India, represented
by Secretary to Government,
Ministry of Agriculture,
New Delhi. Respondents

M/s M.R.Rajendran Nair &
P.V.Asha Counsel for the
applicant

1. Mr. P.V.M.Nambiar, SCGSC ... Counsel for respondents
R-1, R-2, & R-5.

2. Mr. P.Chandrasekharan ... Counsel for respondent
R-4.

3. Mr. B.G.Harindranath ... Counsel for respondent
R-3.

O R D E R

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 15th June, 1989, the

applicant who has been working as Technical Officer

2

in T5 grade in the Central Institute of Fisheries Technology (CIIFT) under the Indian Council for Agricultural Research, has prayed that the selection of 4th respondent to T6 grade of Technical Officer his should be set aside and that post declared to be filled up by promotion and the respondents directed to consider the applicant for promotion to that post with retrospective effect from the date of occurrence of the vacancy. The brief facts of the case are as follows:

2. The applicant commenced service in T3 grade in Category-II in March 1963. The respondent-4 joined CIIFT in 1969/70 in the lower Category-I and came to T3 grade during 1972-73. Both the applicant simultaneously as well as respondent-4 were promoted to T4 grade in Category-II on 27.3.76. and T5 grade in Category-II on 1.7.82. The next promotion is in T6 grade of Category-III which is the lowest grade in that Category. In accordance with the prescribed rules, recruitment of Technical Officers in the lowest grade of each Category, i.e. T1 in Category-I, T2-3 in Category-II, and T6 in Category-III, is normally done by direct recruitment though by a subsequent amendment to the rules dated 7.4.81, 20% of the vacancies in T6 grade may be filled up by promotion from T5 of Category-II (Exbt. R-6).

The contention of the applicant is that 5 of the 6 posts in T6 grade had been filled up by direct recruitment and when the 6th vacancy arose, instead of filling up the post by promotion, the respondents 1 to 3 advertised the post in December 1988 for being filled up by direct recruitment. The applicant also applied but failed to be selected, and respondent-4 was selected. The applicant's contention is that she is definitely senior to respondent-4 and has been stagnating in the T5 grade and was fully qualified to be selected in the promotion quota, being the senior-most in T5 grade. She has argued that her performance was so good that the Scientist in charge recommended her case for promotion to T6 grade by creating an additional post.

The respondents 1 to 3 however, ignoring her claim and in order to favour respondent-4 who is junior to her, resorted to direct recruitment. Her further grievance is that the Recruitment Board included respondent-3 who was obliged to respondent-4 who had donated blood when one of the close relations of respondent-3 was in the hospital and respondent-3 prevailed upon the Recruitment Board to select respondent-4. Her further contention is that the Recruitment Board did not include the Director and was not properly constituted and no written test was conducted in the direct recruitment

and the Recruitment Board resorted only to interview.

She also alleged that the respondent-3, in order to favour respondent-4, gave the applicant adverse entries.

3. The respondents' case is that out of 6 vacancies in T6 grade, 3 vacancies had been filled up from 1.10.75 by adjusting departmental officers of the lower grade, in terms of para 5.2 of the Hand Book of Technical Service Rules. Only 2 vacancies had been filled by direct recruitment. Thus the 6th vacancy which arose on 31.5.85 was allowed to be filled up through direct recruitment. The applicant also applied on 26.5.89 but did not make the grade. They have denied that respondent-3 favoured respondent-4, stating that besides respondent-3, there were 5 other members on the Selection Board. They have explained that in accordance with the amendment to the rules dated 18.2.88 the Director or his nominee was authorised to serve as Chairman of the Selection Committee. They have indicated that in accordance with the rules Agricultural Scientists Recruitment Board was not to conduct the selection to T6 grade. According to them no written test is prescribed under the rules and since the appointment is by selection the inter se seniority between the applicant and the respondent-4 was not

relevant. They have argued that since the applicant did not protest when the direct recruitment was advertised she cannot now challenge the legality of selection after she had failed to be selected.

4. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. We are impressed by the argument of the respondents that the applicant having applied for the T6 post through direct recruitment cannot at this stage, having failed to be selected, challenge the legality of the selection. The Supreme Court in Om Prakash Shukla Vs. Akhilesh K. Shukla, AIR 1986 SC 1043, held that a candidate having appeared in a test cannot question its validity after he fails in the test or finds himself unlikely to pass. The applicant has not produced any convincing proof to establish that she appeared in the test under protest. On the other hand, in the Rejoinder it has been stated that she protested through the JCM. This, to our mind, is not a sufficient or valid protest. Her contention that fundamental rights cannot be waived may be correct but argument how this/is applicable in this case is not clear.

the interview She appeared alongwith other candidates voluntarily in L and no evidence of discrimination is discernible, even if, for the sake of argument, it is accepted that the

post should have been filled up by promotion, since even for promotion selection is the mode of promotion, she had no fundamental right to be promoted on the sole ground of her being senior to the respondent-4.

Respondent-3 has clearly denied that respondent-4 was his close friend or he had given him coaching and stated that 6 persons had offered to donate blood when one of his relations needed it. He also denied having given any adverse entry to the applicant.

Further, the amended provision in the Recruitment Rules (Exbt. R-1) states that "20% of the vacancies in grade T-II-3 and grade T6 may be filled by promotions of persons in grade T-I-3 and T5 possessing qualifications for Category-II and Category-III respectively."

This does not make it mandatory that 20% of the vacancy must be filled by promotion. The amendment is only an enabling provision. Besides, since 3 posts out of 5 had already been filled by adjusting 3 departmental candidates in accordance with Rule 5.2 of the Technical Services Rules of the Indian Council of Agricultural Research, the respondents 1 to 3 were fully within their rights to resort to direct recruitment. Rule 5.2 refers to T5 officers who are considered fit for appointment to grade T6 at the time of

initial constitution of the service being adjusted against the existing vacancies in T6 grade. By no stretch of imagination can such an adjustment be held to be direct recruitment. These 3 adjusted officers are to be held against the promotion quota. There was therefore no scope of filling the sixth vacancy by promotion.

5. In the facts and circumstances, we see no merit in the application and reject the same without any order as to costs.

(A.V. HARIDASAN)
JUDICIAL MEMBER

A. Venk
21.2.90

S.P. Mukerji
S.P. MUKERJI
VICE CHAIRMAN

21/2/90

R.A. No. 35/90,....

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by _____

Ammaanma Mathew (Applicant)

Respondent in OA/TA No. 323/89 seeking a review of the order dated 21-2-90 passed by this Tribunal in the above noted case.

As per Rule 17(ii) and (iii), a review petition shall ordinarily be heard by the same Bench which passed the order, and unless ordered otherwise by the Bench concerned, a review petition shall be disposed of by circulation where the Bench may either dismiss the petition or direct notice to be issued to the opposite party.

The Review petition is therefore, submitted for orders of the Bench consisting of Hon. Shri S.P. Mukerji, V.C. and Hon. Shri A.V. Haridasan, Member (J.J.) which pronounced the order sought to be reviewed.

PS to Hon. Shri S.P. Mukerji
V.C.

Bench V.C. may kindly see.

The points raised are appropriate for an appeal not for a review. However one may know both the parties.

Ammaanma Mathew

Hon. Shri A.V. Haridasan

Yes 29/3/90
29/3/90

29/3/90
29/3/90

29-3-90

SPM & AVH

Mr MR Rajendran Nair for review applicant
Mr NN Sugunapalan for respondents

The learned counsel for the respondents wishes to file reply to the R.A. He may do so within 2 weeks with a copy to the learned counsel for the review applicant.

List for further direction on 16.4.90.

B *SJW*
29-3-90

16-4-90

SPM & AVH

Mr MR Rajendran Nair for review applicant
Mr PSM Nambiar for Res.1&2
Mr NN Sugunapalan for Union of India

The learned counsel for respondents 1-4 seeks some time to file reply statement. He may do so within 3 weeks with a copy to the learned counsel for the opposite parties.

List for further hearing on 23.5.90.

B *SJW*

16-4-90

23.5.90

SPM & AVH

Mr. MR Rajendran Nair
Mrs. C.S. Ramamurthy - for P 1,285.

The ld. counsel for the respondents seeks more time to file reply. He may do so within two weeks with a copy to the learned counsel for the applicant, who may file rejoinder if any within one week thereafter.

List for further directions on 14.6.90.

No further adjournment will be given.

2. SJW

Adjournments
15-6-90 vnb
Notice no. 1/2
90 - 5/2/90
13-6-90

2. SJW
Reply filed by
R. & 2 on
8-6-90

2. SJW
12/6/90
Actual filing date
by Mr. PSM Nambiar
R. & 2 on 13/6/90

23.5.90

15.6.90

(31)

SPM & AVH

Mr MR Rajendran Nair for the applicant.

Mr PVM Nambiar (for R 1 & 2)

Mr BG Harindranath (r3)

Mr P Chandrasekharan (F4)

Mr Madhusoodhanan-Proxy Counsel (for R5)

List for further directions on 17.7.90.

S. Mukerji

15.6.90

17.7.90

SPM & AVH

Miss. Rajalakshmi-for applicant.

Mr.CSRamanathan-for Nambiar

None for others.

M.P.No.525/90

In the M.P. the original applicant in O.A.323/89 who had filed the Review Application wishes to withdraw the same. We allow the petition and dismiss the Review Application No.38/90 in O.A.323/89 as withdrawn.

A. V. Haridasan

(A. V. Haridasan)
Judicial Member

(S.P. Mukerji)
Vice Chairman

17.7.90