

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.345/97

Friday, this the 15th day of October, 1999.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

A.Ramesh Kumar,
Ice Man, Integrated Fisheries Project,
Cochin-16. - Applicant

By Advocate Mr Vellayani Sundararaju

Vs

1. The Director,
Integrated Fisheries Project,
Cochin-16.
2. K.P.Rameshan,
Ice Man, Integrated Fisheries Project,
Cochin-16. - Respondents

By Advocate Mr Mathews J Nedumpara, ACGSC(represented) for R.1

The application having been heard on 15.10.99, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A-5 declaring that the 2nd respondent is not eligible to be considered for promotion on the date of occurrence of the vacancy of Mechanic.

2. Applicant has been working as an Iceman under the 1st respondent from 26.5.87. The next promotion is to the post of Mechanic. For that 8 years service as an Iceman is the qualification prescribed. It is a selection post. Applicant has completed 8 years of service as an Iceman on 25.5.95. The 2nd

respondent is junior to the applicant. The 2nd respondent had not completed the requisite period of 8 years experience to be considered for promotion. With the ulterior motive to deny the promotion to the applicant the first respondent deliberately and intentionally not considered the applicant for promotion and left out the post unfilled till the 2nd respondent completed his period of 8 years in September, 1996.

3. Respondent-1 in the reply statement say that on 9.8.96 one more vacancy of Mechanic arose and the applicant, as per A-6, requested the 1st respondent that he may be promoted to that vacancy. For filling up that vacancy, Departmental Promotion Committee was held on 5.10.96 and considered all qualified persons including the applicant. The DPC recommended the 2nd respondent for promotion. The DPC was convened as per rules as and when regular vacancies were to be filled up, the applicant was considered but his name was not recommended by the DPC for promotion.

4. The question to be considered here is that whether the 2nd respondent had the requisite years of experience for being considered to the post in question. It is the admitted case of the respondent-1 that vacancy arose on 9.8.96. There is no doubt as to the fact that the applicant had already acquired the necessary experience of 8 years by the said date. From A-1 which is not under dispute, it is seen that the 2nd respondent has acquired the requisite experience of 8 years only by 6.9.96.

5. The learned counsel appearing for the applicant vehemently argued that the crucial date is the date on which the vacancy arose and by that date unless the 2nd respondent had acquired the prescribed experience of 8 years, the 2nd respondent should

not have been considered at all and then the applicant alone was qualified candidate to be considered for selection. The learned counsel appearing for the respondent-1 submitted that it is the date on which the DPC met is the crucial date and if a candidate had acquired the requisite years of experience as on the date of the meeting of the DPC, he can be considered and he should be considered.

6. We express our regret to agree with the learned counsel for the respondent-1.

7. The position has been clearly laid down in Varghese & others Vs State of Kerala & others, (1981 KLT, 458(F.B)). It is stated there:

"5. A Full Bench of this Court in the decision in James Thomas V Chief Justice, 1977 KLT, 622 has also expressed the view that the general rule is that promotions are to be decided upon with reference to time of occurrence of vacancies and not the time of making the appointments. We think there is considerable force in the view that it is the time of occurrence of vacancy that should be relevant for determining the question of promotion and not the time the order of promotion is passed. The relevant date must be definite and not depending upon the volition of the authorities as otherwise the determination would be arbitrary. If it were to be the date of promotion that is to be relevant for determining the title to such promotion the rule is capable or arbitrary exercise. Even if it is honest exercise that would be arbitrary because the fate of the service career will depend in each instance upon the time taken by the concerned authority in passing the order of promotion. On the other hand, there is definiteness in treating the date of occurrence of the vacancy as that which would determine the title of the person to be considered for promotion. The view taken by the Division Bench in Ravindranath V Calicut University, 1977 Lab I.C. 1127 appeals to us to be the rational view."

8. The said ruling has been followed by the Kerala High Court in a subsequent case i.e. Padmanabhan Nair Vs Dy. Director, (1991(1) KLT 337(F.B.)). There it is emphatically stated:

"When qualifications are prescribed for a promotion post, eligibility for appointment to that post has to be reckoned with reference to the date on which the vacancy arose. If there was a qualified hand, on that date, in the feeder category, he is entitled to be considered for appointment to the post in preference to his unqualified seniors. The date on which the appointment is actually made is immaterial as the title to the appointment arises on the date of occurrence of the vacancy and is not defeated by the acquisition of qualifications by a senior thereafter. If however, none was qualified on that date, the person who first becomes qualified thereafter is entitled to be considered for appointment, if the vacancy continues to remain. That is the effect of the Full Bench decision of this Court in Varghese V State of Kerala, 1981 KLT 458 as also of the decision of another Full Bench in James Thomas V Chief Justice, 1977 KLT 622. It is sufficient to refer to the first of these cases as it refers to the other decision and follows it. In Varghese's case, the specific question as to what should happen in a situation where there was none qualified on the date of occurrence of the vacancy, and a junior became qualified subsequently, arose for consideration. The Full Bench held that it made no difference whether the vacancy existed already or the vacancy occurred after the junior became qualified. If there was a vacancy as and when a person became qualified for being promoted to such vacancy, he would be entitled to be considered for promotion in that vacancy. If there was no vacancy when a person became qualified for promotion and vacancy arose while he was qualified, his case for promotion called for consideration as and when vacancy arose."

9. In the light of the dictum laid down in the two cases referred above, the submission made by the learned counsel for the applicant is to be accepted.

10. In the reply statement in paragraph 5 it is stated that in the DPC held on 5.10.96 all qualified persons were considered. It is on the basis of the recommendation of the DPC held on 5.10.96 the 2nd respondent was selected and appointed. We are yet to understand what the respondent-1 means by saying "all qualified persons". "All qualified persons" can only mean all those who are qualified in accordance with the rules and the decisions of judicial forums and not according to the whims and fancies of the officials in the department. This can be termed as nothing short of an arbitrary conduct of the official or officials concerned. The chances of promotion or getting selected to a higher post cannot be at the whims and fancies or mercy of the higher authorities. Arbitrariness writ large in this case.

11. In A-8 which is not under attack it is clearly stated that:

"..A vacancy shall be filled in accordance with the recruitment rules in force on the date of vacancy unless rules made subsequently have been expressly given retrospective effect."

(emphasis supplied)

Inspite of A-8 clearly saying that the crucial date is the date of vacancy which means the date of occurrence of the vacancy, the learned counsel for the respondent-1 submitted that the crucial date is the date on which the DPC met for the purpose of considering the length of experience. The DPC which met on 5.10.96 has obviously committed a mistake in recommending the name of the 2nd respondent as if he had acquired the requisite experience of 8 years when he had not acquired the same inspite of the clear mention in A-8 even if the members of the DPC were unaware of the rulings we have referred to.

12. The learned counsel appearing for the respondent-1 drew our attention to the averment in para 3 of the additional reply

statement wherein it is stated thus:

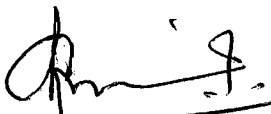
"It is humbly submitted that the DPC considered the candidate of all who came in the zone of consideration, but did not make a panel for the said post other than the selected Shri K.D.Raju or for the anticipated vacancy since the DPC did not find a candidate fit for promotion in the feeder category."

If this is the case, it is only to be said that the person or persons who prepared the list of candidates who were in the zone of consideration is yet to learn and understand how to prepare a list of candidate who come in the zone of consideration. We refrain from saying anything further.

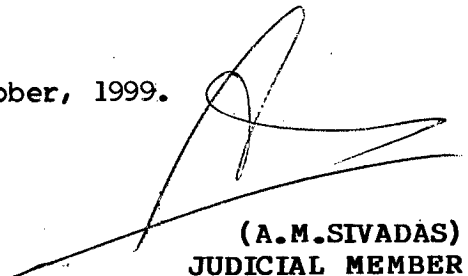
13. As directed on the last hearing date, the respondents produced the file relating to the DPC wherein the applicant was also considered. We have carefully perused the same. We have no hesitation in saying that the 2nd respondent was not eligible to be considered by the DPC which met on 5.10.96 for the vacancy that arose on 9.8.96.

14. Accordingly the O.A. is allowed quashing A-5 order as per which the 2nd respondent has been given the post of Mechanic by declaring that the 2nd respondent was not eligible to be considered for promotion on the date of occurrence of the vacancy of Mechanic. First respondent shall pay costs Rs.750(Rupees seven hundred fifty), to the applicant.

Dated, the 15th of October, 1999.



(G. RAMAKRISHNAN)
ADMINISTRATIVE MEMBER



(A.M. SIVADAS)
JUDICIAL MEMBER

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