

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.366/98.

Wednesday, this the 18th day of April, 2001.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. C.Muralidharan,
Upper Division Clerk,
Integrated Fisheries Project,
Kochi-16.
2. M.R.Mohanan Nair,
Lower Division Clerk,
Integrated Fisheries Project,
Kochi-16. - Applicants

By Advocate Mr TC Govindaswamy

Vs

1. Union of India through
the Secretary to Government of India,
Ministry of Agriculture,
New Delhi.
2. The Director,
Integrated Fisheries Project,
Kochi-16.
3. Shri Madhu Ramakrishnan,
Upper Division Clerk,
Integrated Fisheries Project,
Kochi-16. - Respondents

By Advocate Mr Thomas Mathew Nellimoottil

The application having been heard on 27.2.2001, the Tribunal
on 18.4.2001 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicants, Shri C Muralidharan and Shri
M.R.Mohanan Nair were working as Upper Division Clerk(UDC for
short) and Lower Division Clerk(LDC for short) respectively in

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the Integrated Fisheries Project (IFP for short), Cochin at the material time. Their grievance is that the third respondent, Shri Madhu Ramakrishnan, LDC of IFP, was arbitrarily and illegally promoted as UDC as per A-7 order dated 7.2.98 in preference to the applicants, thereby violating the Recruitment Rules in force in the IFP. According to the first applicant, the vacancy of UDC that arose on 1.1.98 was one which ought to have been adjusted against 75% quota fixed for LDCs with 5 years' service on the basis of seniority, subject to rejection of unfit and not against 25% quota set apart for LDCs with 3 years' service, according to the ranks obtained in the Limited Departmental Competitive Examination (LDCE for short). He would therefore maintain ^{that} he ought to have been given promotion against the vacancy that arose on 1.1.98. Similarly, another vacancy of UDC which arose on 16.2.98 was also legitimately to be adjusted against the 75% seniority quota; and the second applicant maintains that he had the right to be considered against that vacancy. It is the contention of the applicants that since the vacancies under 25% quota had already been exhausted, the promotion of the third respondent, Shri Madhu Ramakrishnan, as per A-7 order, was unsustainable. The applicants, therefore, seek the following reliefs:

(a) Call for the records leading to the issue of A-7 and quash the same.

(b) Declare that the vacancies in the cadre of Upper

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Division Clerks under the respondents which arose on 1.1.98 and 16.2.98, are the vacancies to be set apart for 75% quota and direct the respondents to consider the applicants for promotion accordingly with consequential benefits thereof, with a further direction that such benefits of promotion shall be granted to the 1st applicant with effect from the date of promotion of the 3rd respondent and second applicant with effect from 23.2.98, with consequential arrears thereof.

2. We have heard Shri TC Govindaswamy, counsel for the applicants and Shri Thomas Mathew Nellimoottil, counsel for the official respondents. The various documents including the Recruitment Rules and the DPC proceedings at various points of time etc. have also been produced for our perusal. Learned counsel have filed elaborate argument notes.

3. The contentions of the applicants, duly elucidated or amplified by the learned counsel, can be summarised as under: The first applicant joined the cadre of LDC under the respondents on 18.8.77 and the second applicant joined the said cadre on 3.8.81. As per the original Recruitment Rules applicable to the IFP, the posts of UDCs were to be filled up 100% by promotion from LDCs with 3 years' service, subject to seniority and rejection of unfit. These rules were amended in 1976 as per which 50% of the posts of UDC in IFP were to be filled from LDCs with 5 years' service in the grade on the

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basis of a Limited Departmental Competitive Examination (LDCE for short). The said 1976 Recruitment Rules were again amended in 1984 and, accordingly, 75% of the vacancies in the cadre of UDC were to be filled from among LDCs with 5 years' service on the basis of seniority, subject to rejection of unfit, and 25% from among LDCs with 3 years' service on the basis of LDCE. The said rule is made by the President of India under the proviso to Article 309 of the Constitution. After the Recruitment Rules of 1984 came into force, the respondents promoted 4 persons including one Shri Ignatius Sunny Eric against the test (25%) quota whereas 11 persons were promoted against the seniority (75 %) quota. This being the position, as in November, 1996, one Smt. Mini C Pillai was promoted against test (25%) quota. Thus, the total number of persons promoted against the test (25%) quota was 5 while only 11 persons remained promoted and adjusted against seniority (75%) quota. At the relevant point of time, therefore, the actual number of LDCs required to be promoted against the seniority (75%) quota was 15 as against 11 promoted. The first applicant made a representation dated 14.1.98(A-5) highlighting his position as the seniormost LDC to be promoted as UDC against the vacancy that had just arisen with effect from 1.1.98 on account of the retirement of one Smt. M.D. Radhamani Amma. In A-5 representation, the applicant further claimed that the said vacant post was liable to be filled up against seniority quota. On 7.2.98, the applicant got a reply (A-6) to the effect that the promotion to the post of UDC would be made as per the provisions of the recruitment

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rules and extant orders. However, there was no favourable action from the respondents. On the contrary, what happened was the issue of the impugned order A-7 dated 7.2.98, whereby the 3rd respondent was promoted against Test (25%) quota. The promotion of the 3rd respondent, Shri Madhu Ramakrishnan, in preference to the applicants was, therefore, arbitrary. Once the Recruitment Rules of 1984 came into being, the promotions to be made thereafter ought to have been in strict adherence to such rules and there was no scope for interfering with the rules by causing distortions in the seniority position. The promotion of Shri Ignatius Sunny Eric, one of the eligible candidates for promotion as UDC under the category of test quota has resulted in serious distortion in the chain of promotions to the cadre of UDC in IFP, in terms of the Recruitment Rules of 1984. Though the respondents' stand was that the promotion of Shri Ignatius Sunny Eric was actually under the seniority quota, the claim is factually incorrect since the entire promotion as recommended by the DPC held on 3.5.95 was to be reviewed by the review DPC held on 23.11.95 and 25.11.95. Therefore, there was no way explaining that Shri Ignatius Sunny Eric was promoted against seniority quota. Out of the 19 vacancies of UDCs said to have been arisen on 3.7.95, as per the minutes of the review DPC, the said review DPC(R-2), 14 vacancies pertained to seniority quota and the remaining 5 vacancies were on account of test quota. This being the position of vacancies upto 3.7.95, if Shri Ignatius Sunny Eric was indeed to be considered against seniority quota, his name ought to have been there. But his name is

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conspicuously absent in the recommended list by the DPC, because there was, in fact, no vacancy to accommodate him. The promotion of Shri Ignatius Sunny Eric as on 3.5.95 against the seniority quota should have, therefore, been annulled and he ought to have been adjusted against test quota for the reason that he already stood empanelled for promotion towards test quota in terms of the panel dated 5.5.95(A-9). Had this been done, the first applicant could have been promoted against the vacancy wherein the third respondent was accommodated by the impugned order and consequently, the second applicant would have got accommodation in the next vacancy. Having regard to the 19 posts of UDCs as on 3.7.95, the 3 vacancies which arose between 3.7.95 and 19.2.98 and also taking into account another vacancy that arose immediately thereafter, the applicants could be absorbed as 22nd and 23rd candidates against seniority quota, if only the vacancies were correctly adjusted. The whole chain was broken only because of the irregular adjustment of Shri Ignatius Sunny Eric.

4. The synopsis of the counter arguments advanced by the learned counsel for respondents can be presented thus:

Although the Recruitment Rules were amended in 1984 as per the Department of Personnel and Training (DOPT) O.M.No.22011/7/86-Estt.(D) dated 3.7.86(R-1), the unfilled direct recruitment quota vacancies would be carried forward and added to the corresponding direct recruitment vacancies of

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next year and thence to the subsequent orders, if necessary, for taking action for direct recruitment for the total number according to usual practice. The back log vacancies to be filled by LDCE were required to be reckoned with at 1:1 for the period upto 1984, and thereafter at 3:1. The first departmental examination under test quota after the amended Recruitment Rules of 1984 came into force was held only on 27.4.95. Four persons, including Shri Ignatius Sunny Eric who was placed at third in the rank list, were empanelled for the purpose of promotion. However, Shri Ignatius Sunny Eric was promoted against seniority quota by virtue of his seniority against the 15th point in the 40 Point Roster as per the recommendations of the DPC held on 3.5.95. As per the review DPC held on 23.11.95 and 25.11.95, vacancies in the cadre of UDCs from 12.5.76 to 3.7.95 were reviewed. On the basis of the reservation roster upto the 14th point as well as promotions made against seniority quota, there was a backlog of 4 vacancies against test quota. Out of these 4 vacancies against test quota, one was adjusted against Shri S.D.Raju who was appointed on transfer at IFP, Vizag Unit. Shri Ignatius Sunny Eric who was promoted against the seniority quota as per DPC proceedings dated 3.5.95 assumed charge on 9.5.95 in a regular vacancy. Since the review DPC considered the cases of those UDCs who were holding the posts on ad hoc basis as on 3.5.95 in order to regularise them and since Shri Ignatius Sunny Eric was holding the post against a regular vacancy with effect from 9.5.96, his case did not come within the purview of the review DPC.

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5. We have perused the records and considered the pleadings having regard to the verbal and written submissions of the learned counsel for the applicants and the respondents. It would appear that the DPC held on 3.5.95, was reviewed by a review DPC held on 23.11.95 and 25.11.95 on the basis of representations made by some UDCs and allegedly under the DOPT OM dated 3.7.86. It was a partial review, as admittedly what was reviewed was, promotions made to the cadre of UDC upto 3.5.95. The line of argument taken by the respondents to the effect that the review did not consider the promotion of Shri Ignatius Sunny Eric, since the review was confined to the promotions on ad hoc basis made upto 3.5.95 for the purpose of regularisation of ad hoc promotees is unacceptable. In the first place, adjustment of Shri Ignatius Sunny Eric against 40 Point Roster is not tenable in view of the Apex Court decision in R.K.Sabharwal and others Vs State of Punjab and others, (1995) 2 SCC, 745. Further, Shri Ignatius Sunny Eric was among the LDCs who were admittedly recommended for promotion by a DPC held on 3.5.95 vide R-5(2) filed by the respondents in M.A.56/2001. It is apparent that he was given regular promotion against seniority quota as per R-5(1) order dated 8.5.95 vide M.A.56/2001, filed on 9.2.2001. It is not understood as to the justification for excluding the promotion of Shri Ignatius Sunny Eric from the review process. According to us, as on 3.7.95, out of the 19 vacancies of UDCs, 14 vacancies arose against seniority(75%) quota and this is clear from the vacancy list approved by the review DPC. The number of total vacancies being 19 at the material time,

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it would follow that the allocation of 75% seniority quota and 25% LDCE quota should be 14 and 5 respectively. 14 persons having been recommended by the review DPC against seniority quota, the remaining 5 ought to figure under test quota. Shri Ignatius Sunny Eric is not one of the 14. So where does he go? Under what category does he fall? His promotion is a reality as admitted by all. The respondents have not answered the above questions. The explanation regarding the non-inclusion of his name in the reviewed list is hollow. Going by the facts and circumstances, we have to hold that Shri Ignatius Sunny Eric who had at the relevant point of time been empanelled for promotion against test (25%) quota should in fact have been considered under test quota only. We have to proceed from there to the situation which constitutes the applicants' cause of action.

6. When the circular dated 13.11.96(A-2) regarding the LDCE was issued, the applicant, apparently made a representation staking their claim to be considered for regular promotion under seniority quota. The respondents by communication dated 4.1.97 (A-3), explained the mode of promotion as per the Recruitment Rules and assured them that available vacancies would be filled up strictly observing the quota prescribed for promotion on seniority/merit in the qualifying departmental examination, as provided under rules and as per extant orders. The first applicant was the seniormost LDC waiting for promotion when he later made A-5 representation dated 14.1.98. His claim was not rebutted by

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the A-6 communication dated 7.2.98. The first applicant was informed that the promotion would be made in accordance with the Recruitment Rules and extant orders. On the same date, the third respondent was given promotion against 25% quota. On the basis of our findings in the forgoing para, when 75% and 25% quota for promotion by seniority-cum-fitness and promotion by LDCE is implemented, the two applicants would apparently come under the seniority quota to be absorbed before the third respondent. It is also evident that the Circular dated 9.1.97 which empanelled the third respondent would have validity upto 8.1.98. No extension of the validity period is in evidence. Thus, when the third respondent was granted promotion, as per A-7 order dated 7.2.98, the panel itself would appear to have lapsed. The applicants, therefore, have a case for being considered for promotion under the seniority quota before the third respondent.

7. In our considered view, there is no backlog of vacancies to be taken into account while recasting the seniority and regularising the promotions in pursuance of the review DPC. The respondents have not been able to adduce any evidence regarding actual number of unfilled vacancies, if any, arising prior to 1984. Annexure R-2 would make it appear the two vacancies arose prior to 1984 against the merit quota, but A-8 order dated 25.1.77 would make it clear that these two vacancies arising out of the earlier Recruitment Rules were duly exhausted. In any case, on the basis of the respondents'

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own averment, it would appear that the staff side was persistent in its demand for promotion to the cadre of UDCs based on seniority alone, that an amendment of Recruitment Rules was under consideration, that no competitive examinations were held subsequently and that a conscious decision was taken not to fill up the vacancies earmarked for merit quota. The amendment of the Recruitment Rules 1984 have to be seen in the above perspective. It is, therefore, against all norms of fairness and administrative proprieties as well as probabilities that the direct recruitment vacancies (25%) were stated to be carried forward and sought to be filled up long after the amended Recruitment Rules of 1984 came into force.

8. We are inclined to agree with the applicants that with the coming into force of the amended Recruitment Rules of 1984, the vacancies as per quota fixed for pre-amended Recruitment Rules cannot be carried forward as a separate block, since such vacancies cannot be filled up in terms of the pre-amended Recruitment Rules. All the vacancies which existed in the year 1984 and which arose after 1984 ought to be filled in terms of the amended Recruitment Rules only. As stated earlier, as in 1984, no vacancies either under seniority quota or under LDCE quota remained to be filled and hence to be carried forward. It was more than 10 years after the coming into force of the 1984 Recruitment Rules that the respondents seek to identify and set off the alleged deficiency in quota requirement for LDCE in terms of the

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pre-amended Recruitment Rules for absorption. This, according to us, is not only absurd, but unjust.

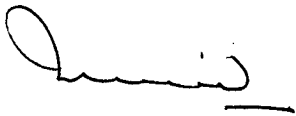
9. In view of the above factual situation, we think it necessary to direct the respondents to draw a new list on the basis of 1984 Recruitment Rules alone. It is essential that a list of persons eligible to be promoted whether under LDCE quota (25%) or seniority quota (75%) on the basis of their respective seniority is drawn, strictly according to those rules. The applicants' position with regard to 1984 Recruitment Rules and in consonance with our above observations needs to be ascertained and on the basis of that, their claim for promotion should be examined and decided. Our findings, it is clarified, are intended only to highlight the applicants' case for being considered for promotion and not intended to lay down that the applicants should be given promotion without looking into all other relevant factors. A comprehensive list of eligible persons, as suggested above, therefore, would resolve the dispute raised by and redress the hardship, if any, caused to the applicants.

10. In view of our above findings, A-7 order dated 7.2.98 is set aside. Accordingly, we direct the respondents to issue a speaking order in this regard in accordance with the rules, regulations and instructions relevant therefor within three months from the date of receipt of copy of this order. If vacancies arose on 1.1.98 and 16.2.98 as claimed by the applicants, those ought to be filled on the basis of the

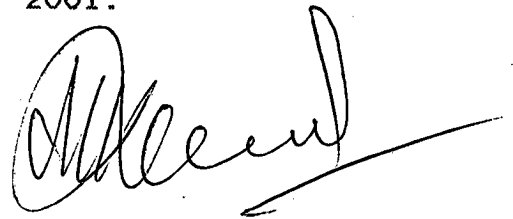
revised list to be drawn in the light of Recruitment Rules of 1984 and other relevant rules, regulations and instructions and also having regard to the first applicant's representation(A-5).

10. The application is disposed of as above. The parties shall bear their own costs.

Dated, the 18th April, 2001.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES REFERRED TO IN THE ORDER;

1. A-2: True copy of the Circular No.A1/2-1/89/2895 dated 13.11.96 issued by the Accounts Officer.
2. A-3: True copy of the Memorandum No.A1/2-1/89/43 dated 4.1.97 issued by the 2nd respondent.
3. A-5: True copy of the representation dated 14.1.98 submitted by the 1st applicant to the 2nd respondent.
4. A-6: True copy of the Memorandum No.A1/1-9/96/343 dated 7.2.98 issued by the Accounts Officer.
5. A-7: True copy of the Office Order No.26/98 dated 7.2.98 issued by the 2nd respondent.
6. A-8: True copy of the Office Order No.C.10/77 dated 25.1.77 issued by the 2nd respondent.
7. A-9: True copy of the Circular No.A1/2-1/89 dated 5.5.95 issued by the 2nd respondent.
8. R-1: True copy of OM No.22011/7/86-Estt(D) dated 3.7.86.
9. A-2: True copy of the extract of the proceedings of the DPC.
10. R5-1: True copy of the Office Order No.58/95 dated 8.5.95 issued by the 2nd respondent.
11. R5-2: Proceedings of the DPC held on 3.5.95