

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 371/92

Wednesday, this the 17th day of November, 1993.

CORAM

HON'BLE MR N DHARMADAN, JUDICIAL MEMBER

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Tomy Prince S/o Aiputty,
Manakkil, Junior Clerk (Telephones)
Central Marine Fisheries Research Institute,
Kochi-31 .. Applicant

(By Advocate Mr PV Mohanan)

Vs.

- 1 The Director General, Indian Council
of Agricultural Research, Krishi Bhavan,
New Delhi.
- 2 The Director, Central Marine Fisheries
Research Institute, Kochi-31. .. Respondents

(By Advocate Mr P Jacob Varghese for Respondent-2)

ORDER

N DHARMADAN, J.M

Applicant is a Junior Clerk (Telephones) in the Central Marine Fisheries Research Institute, Kochi. He is aggrieved by the denial of pay and allowances of Assistant (Telephone Operator/ Receptionist) and the disposal of the representations filed in this behalf claiming the above benefits.

2 According to the applicant, he served in the Indian Navy from 3.10.1973 to 31.10.1983 as Leading Radio Operator which was treated as equivalent to the Trade Trunk Operator. While working in the Navy, since he gained sufficient experience and became an efficient Telephone Operator, he applied through the Employment Exchange when the 2nd respondent, Director, Central Marine Fisheries Research Institute, Kochi, CMFRI, for short, issued a notification for selection and appointment of a Junior Clerk. By order

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dated 7.11.86, the 2nd respondent selected and appointed the applicant as a Junior Clerk(Telephones) under him in the revised scale of Rs 950-1500. He completed his probation on 3.12.1988. According to the applicant, Technical Service Rules, which came into force with effect from 1.10.75 apply to the post and under the said rules, he is entitled to get the benefits of five yearly assessment and merit promotion irrespective of vacancies, but such benefits under the said rules have not been made available to him. ICAR also issued a letter in 1986 to CMFRI stating that recruitment may be made to one post of Receptionist-cum- Telephone Operator by adopting the method of recruitment of Assistant (Stores, Assistant(Audit), Assistant(Establishment, and redesignate the post of Assistant (Receptionist-cum-Telephone Operator) in the pay scale of Rs 1400-2300 (Revised). Since the applicant had been recruited to the post of Junior Clerk (Telephone) by a properly constituted Selection Committee, he is entitled to be posted in the above post. Accordingly, he submitted representations for his absorption in the above post treating him as a Technical personnel for the grant of all the benefits envisaged under the Rules. He ~~was~~ also pointed out a case of one Shri P. Bahuleyan, Telephone Operator, working in the Central Institute of Fisheries Technology, (CIFT) who had been given all the benefits, including merit promotion and five yearly assessment under the Technical Service Rules. He has produced Annexure-II order in support of his contentions. Citing the case of Shri Bahuleyan, applicant also filed a

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representation at Annexure-III dated 28.8.91. In the meantime, the 2nd respondent issued a notification Annexure VIII dated 31.12.91 to fill up the post of Telephone Operator/Receptionist in the grade of Assistant. Applicant's request for appointment was rejected by the impugned order Annexure IX. Under these circumstances, he has filed this D.A. with the following prayers:

- " (i) to call for the records leading to Annexure VII and IX and set aside the same;
- (ii) to declare that the applicant is entitled to get the scale of pay of the Assistant (Telephone Operator/Receptionist) with all consequential benefits;
- (iii) or in the alternative to declare that the applicant is a technical personnel under the Technical Service Rules with all benefits including the benefits of Assistant/Merit Promotion or advance increment;
- (iv) to set aside the selection and appointment to the post of Telephone Operator Receptionist pursuant to Annexure VIII notification."

3 Respondents have filed a detailed reply statement in which they have stated that at the time of introduction of Technical Service Rules with effect from 1.10.75, the post of 'Telephone Operator' was classified as 'Technical' category, but by a clarification letter No.9-1/82- Per.IV dated 28.5.82, Annexure R1, the post of 'Telephone Operator' was brought within the Administrative category, and hence the question of applying the Technical ^{Service} Rules in the case of the applicant does not arise at all. Moreover, the applicant had been appointed to the post of Junior Clerk (Telephones) and not to the post of 'Telephones' as stated by him. His duties include correspondence with Telecommunication Department regarding installation of telephones, maintenance

of exchange, maintenance of telephones/ trunk calls registers, bills registers, etc. His next promotion will be to the post of Senior Clerk. Only after getting a posting as Senior Clerk, he can aspire for promotion as Assistant, and hence he cannot be redesignated or treated as Assistant as claimed by him. The pre-revised scale of pay of Rs 950-1500 is Rs 260-400 and not Rs 260-430 as stated by the applicant. The post of Telephone Operator under ICAR has been classified as 'Administrative' in all the Institutes as per ICAR letter dated 28.5.82. Necessary recruitment rules for the post has been framed by the ICAR as per letter No.23(3)/87-Per.III dated 20.4.88 (Annexure-R IV). Hence, all the statements of the applicant in this behalf are wrong. Under these circumstances the original application is liable to be rejected.

4 We find that the applicant was not able to establish his claims by producing satisfactory documents to show that he is governed by the Technical Service Rules so as to claim the benefit of five yearly assessment and merit promotion under that rules. On the other hand, the respondents have produced Annexure R1, R II, and Annexure RIV to satisfy us that the post now occupied by the applicant comes under 'Administrative category' governed by Annexure RIV. Admittedly, the applicant was appointed as Junior Clerk (Telephones) in the scale applicable to that post. His next promotion under the normal procedure appears to be Senior Clerk in the Administrative category. Under these circumstances, we are satisfied that the case of the applicant on the first count deserved to be rejected and we do so.

5 Applicant heavily relied on Annexure-II, an order issued in respect of pay fixation of Shri P Bahuleyan T-2 on his appointment as T 1-3, and submitted that Shri Bahuleyan, Telephone Operator in CIFT is governed by Technical Service Rules and he is enjoying all the benefits under the same. He was assessed after five years of continuous service as T-1 as per Annexure-VI. and promoted as T-2 (Rs 330 -560 pre-revised)/ Thereafter, he was assessed for promotion to T 1-3 (Rs 425-700 pre-revised) and he can aspire for further promotions in that line. Thus, he is enjoying all the benefits under the Technical Service Rules. The applicant is similarly situated person eligible for same treatment. According to him the denial of all these benefits to him would be discriminatory and violative of the provisions of Articles 14 and 16 of the Constitution of India.

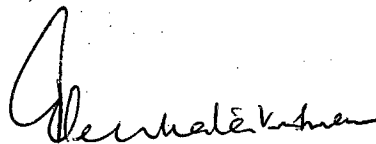
6 This case is effectively met by the respondents in para 8 of the reply. It reads as follows:

"8 A perusal of letter No.4-12-91-Adm dated 16.01.92 from the C.I.F.T., Cochin-29 (Annexure VI to application) will indicate that a post of Telephone Operator-cum- Receptionist in the pre-revised scale of Rs 110-180 (revised latter as Rs 260 -400) was filled up by appointing Shri P. Bahuleyan w.e.f. 16.7.84. When the Technical Service Rules were introduced w.e.f. 1.10.75, the post was classified as Technical and the individual was inducted to Grade T-1 of the Technical Service and subsequently assessed and promoted according to the Technical Service Rules. Though the post was re-classified as 'Administrative Category' subsequently as per ICAR letter dated 28.05.82, the individual has been allowed to continue to be a member of the Technical Service on personal basis and to derive all the benefits provided in the Technical Service Rules as permissible in ICAR letter No.9-1/82-Per.IV dated 22.07.82 (copy enclosed and marked as Annexure R.V)!"

7 The explanation given by the respondents is convincing and satisfactory. Shri P Bahuleyan is enjoying the benefits under the Technical Service Rules under a peculiar circumstance

as personal to him. The applicant is not similarly situated like Shri P Bahuleyan, and hence they are unequal and ~~xxxxxx~~ the provisions of Article 14/ are not attracted. In the light of the above explanation, we are satisfied that the applicant has not also established his case based on discriminatory treatment as urged by him before us.

8 In the result, having regard to the facts and circumstances, we are satisfied that the applicant's claim that he is qualified enough to be treated as Assistant without getting further promotion as Senior Clerk has not been substantiated by facts and figures in support of his case. We are satisfied that there is no merit in this application, and it is only to be rejected. We do so. There shall be no order as to costs. This will not stand in the way of the applicant establishing his case with sufficient materials.



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

 17.11.93

N DHARMADAN
JUDICIAL MEMBER

17-11-1993

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