

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 389/91  
XXXXXX No.

DATE OF DECISION 31.7.91

A.A.Abdul Khader

Applicant (s)

Mr.M.M.Saidu Mohammed

Advocate for the Applicant (s)

Versus

The Director,  
Central Institute of Fisheries, Nautical & Engineering Training,  
Dewan's Road, Cochin-16.

Respondent (s)

Mr.K.A.Churian, ACGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

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

In this application dated 8.3.1991 the applicant who had been working as Engine Driver Class-II in the Central Institute of Fisheries, Nautical & Engineering Training (CIFNET), Cochin on a casual basis has prayed that he should be declared to be entitled to be appointed as Engine Driver Class-II on a regular basis based on the order of this Tribunal dated 21.12.1990 in O.A 687/89 at Annexure-A1 and that the respondents be directed to appoint him as Engine Driver Class II forthwith in accordance with that order. The brief facts of the case are as follows.

2. The applicant was appointed as Engine Room Assistant from October 1978 to November, 1981 in the CIFNET and after passing the competency examination for fishing engine drivers conducted by the Mercantile Marine Department in April, 1982 he qualified for the post of Engine Driver and got

his name registered with the Employment Exchange. He was engaged on a casual basis as Engine Driver Class II for 78 days in 1986 and as admitted by the respondents he was appointed on adhoc basis as Engine Driver Class-II initially for three months with effect from 5.10.87 after being sponsored by the Employment Exchange. This adhoc appointment was extended with intermittent breaks till 31.3.89. After that date he was not employed and the respondents after inviting names from the Employment Exchange <sup>for the post of Engine Driver II</sup> conducted an interview on 11.8.89.

The applicant was not called for interview. He accordingly moved this Tribunal in O.A 687/89 praying that he should be declared to be entitled to be reappointed to one of the vacancies of Engine Driver Class-II with preferential <sup>right</sup> of reemployment under Section 25 H of the Industrial Disputes Act. That application was decided by the judgment of the Tribunal dated 21.12.90 with the following directions:-

"8. In the facts and circumstances, we allow this application to the extent of directing the respondents to give the applicant preference for casual engagement as Engine Driver Class II over those who were included in the panel prepared after 1986 when the applicant was empanelled. We also direct that for purposes of filling up any regular vacancy, of Engine Driver Class II in CIFNET, the applicant also should be considered even though he may be over aged when he is so considered and even though he is not sponsored by the Employment Exchange, unless he abandons his casual employment or is on other grounds disqualified from such appointment. This order will be without prejudice to the claims of the applicant under the Industrial Disputes Act for which he is at liberty to approach the appropriate legal forum in accordance with law."

After the above order was passed the applicant represented to the respondents to appoint him in the post of Engine Driver Class II by terminating the service of those who were engaged from the panel prepared after 1986(Annexure-A3). In spite of personally approaching the respondent thereafter, no action was taken to appoint him. On 13.2.1991 he filed a detailed representation to the respondent at Annexure-A4 indicating that there was a regular vacancy of Engine Driver Class-II and other vacancies which have been filled up by appoint-

ing candidates from outside the panel and without test and interview without considering the claims of the applicant as established by the Tribunal's aforesaid order. He also mentioned four names of casual Engine Driver II who have been appointed without test and interview. When no action was taken on the representation, the applicant moved this application before the Tribunal. His grievance is that in spite of his total service of about 5 years as Engine Driver Class II in the CIFNET with 516 days of continuous service between 1987 and 1989 and in spite of the vacancies available, his claims as endorsed by the Tribunal have been ignored in violation of the order of this Tribunal.

3. The respondent in the counter affidavit has taken the technical plea that the application is barred by <sup>the principle of</sup> 'res judicata.' They have clarified that one Sri V.Narayanan who was transferred from another project was regularised in one of the post of Engine Driver Class-II vide the order dated 8.10.88 at Exhibit R(a). In accordance with the direction of the Tribunal in an application filed by Shri Narayanan (Ext.R(b)) he was regularised in the post of Chief Engineer Grade II with effect from 31.10.1979. Thereafter even though the post of Engine Driver Class-II vacated by Sri Narayanan was available, it was kept in abeyance in view of the decision for decommissioning another vessel and the post was kept for abolition. The other vessel was disposed of on 13.2.1991. They have also clarified that another Engine Driver Grade I Shri Manoharan though appointed as Chief Engineer Grade I on an adhoc basis, no vacancy in Gr.I was available and thus no vacancy can be created in Gr.II by promotin some Gr.II officer to Gr.I post. All other posts have been kept as tenure posts. They have clarified that in order to enable the trainees to acquire sea service to enable them to appear in the Certificate of Competency

Examination of the Mercantile Marine Department , five posts are filled up by them on a tenure basis. They have indicated that against the four regular posts of Engine Driver Class-II three have been filled up on a regular basis and one has to be abolished on decommissioning of a vessel. Thus there is no vacancy in that grade. The respondent has certified that he has not filled up any post of Engine Driver Class-II regular or tenure after the judgment in O.A 687/87 dated 21.12.1990 and that there is no chance in the near future of regular vacancy of Engine Driver Class-II arising.

4. In the rejoinder the applicant inter alia has stated that the five posts of Engine Driver Class-II which have been filled up on a tenure basis are actually regular posts and not meant for training. The so-called trainees are paid regular pay scale of Engine Drivers and were appointed after the termination of the service of the applicant. The applicant has further alleged that one fishing vessel M.V.Prashikshani was kept idle for want of Engine Driver Class-II, but after receiving the notice in the O.A. one Sri Basil James was transferred from Skipper I to let it sail and that Skipper I has been laid up for want of Engine Driver Class II.

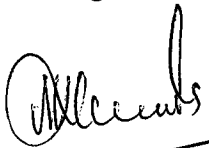
5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We cannot accept the contention of the respondent that this application is barred by the principle of 'res judicata,' because in the application before us the applicant is merely claiming the benefits of the judgment of this Tribunal which he got in his favour on 21.12.90 in O.A 687/89. His plea is that vacancies of Engine Driver Class-II are there to which he is entitled to be appointed under the directions of the

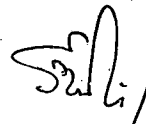
Tribunal in that case. In the previous application(O.A 687/89) he had prayed for reappointment to one of the vacancies of Engine Driver Class-II with preferential rights of reemployment under the Industrial Disputes Act.

6. As regards the merits of the case, the respondent in para 6 of the reply statement has conceded that in accordance with the orders of this Tribunal dated 27.7.89 in T.A No.169/87 Shri Narayanan who was working as Chief Engineer Gr.II on an adhoc basis was regularised in that grade with effect from 31.10.1979. A copy of the order dated 26.3.90 has been appended as Ext. R(b). Accordingly the post of Engine Driver Class-II which he was holding till 26.3.1990 fell vacant. Since this vacancy accrued from 31.10.1979 and had not been abolished till the counter affidavit was filed on 7th June, 1991, as is evident from para 9 of the counter affidavit where it is stated that the post was yet to be abolished, we have a feeling that the benefit of the judgment in OA 687/90 has been unfairly denied to the applicant by keeping the post unfilled. The applicant has alleged that because of not filling up that post one of the fishing vessels Prashikshani has been kept idle and subsequently one Sri Basil James from another vessel Skipper I was brought over for operating that vessel. In the meantime the latter vessel, i.e., Skipper I has been laid up for want of Engine Driver Class-II. This allegation in para 5 of the rejoinder also has not been rebutted by the learned counsel for the respondent even during the course of the argument on 12.7.91. The respondent has also stated that there are five tenure posts of Engine Driver II which are being used to impart

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necessary sea service to the trainees so that <sup>appear</sup> they may in the Competency Certificate Examination of the Mercantile Marine Department . In the context of one of the fishing vessels remaining idle, one regular vacancy remaining unfilled and existence of five tenure posts, we see no reason why the applicant should not be considered for <sup>casual and regular</sup> appointment as Engine Driver Class II . Accordingly we allow the application to the extent of directing the respondent to consider the applicant for appointment to the regular post of Engine Driver Class-II if the same has not been already abolished, and if it has been abolished to consider him for appointment as Engine Driver II in one of the tenure posts of Engine Driver II in accordance with law. Action on the above lines should be completed within a period of three months from the date of communication of this order. We further direct that till such time as the applicant remains to be considered for regular appointment as Engine Driver II on the above lines, he should be appointed forthwith on a casual basis against the regular vacancy of Engine Driver II if the same has not been abolished and if the same has been abolished against one of the five tenure posts whichever of them falls vacant on the earliest completion of the sea service by any of the trainees holding the tenure posts. There will be no order as to costs.

  
31.7-91  
(A.V. Haridasan)  
Judicial Member

  
31.7-91  
(S.P. Mukerji)  
Vice Chairman

n.j.j