

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.400/ 96

Friday, this the 28th day of August, 1998.

CORAM

HON'BLE MR P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

M. Damodharan, S/o Late P. Prabhakaran Menon,
Wireless Supervisor,
(Presently working as Assistant Instructor(Electronics),
Central Institute of Fisheries, Nautical
and Engineering Training,
Unit - Vishakapatnam, Vishakapatnam - 530 001.
Permanent Address:
No.16/428, Thamaram Kulangara,
Tripunithra, Ernakulam.

.. Applicant

By Advocate Mr T .C. Govindaswamy.

Vs

1. Union of India through
the Secretary to the Govt. of India,
Ministry of Agriculture,
Department of Agriculture & Co-operation,
Krishi Bhavan, New Delhi - 1.
2. The Director,
Central Institute of Fisheries,
Nautical and Engineering Training,
Kochi - 16.
3. The Deputy Director,
Central Institute of Fisheries,
Nautical and Engineering Training,
Fishing Harbour,
Vishakapatnam - 530 001.
4. Shri N.P. Bannibagi,
Assistant Instructor (Electronics),
Central Institute of Fisheries,
Nautical and Engineering Training,
Fishing Harbour,
Vishakapatnam - 530 001.

.. Respondents

By Advocate Mr George Joseph, ACGSCfor Respondents 1-3.

The application having been heard on 13.8.98, the
Tribunal delivered the following on 28.8.1998.

O R D E R


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

The applicant seeks to quash A-17, to declare that
he is eligible to be paid the scale of pay of the post of
Assistant Instructor (Electronics) for the period from

18.10.84 the date from which he had been holding that post, to direct the respondents to consider him for regular absorption/appointment as an Assistant Instructor (Electronics) duly granting all the consequential benefits from 18.10.84, and in the alternative to the prayer for declaration, to direct the respondents to relieve him back to Kochi Unit of the Central Institute of Fisheries, Nautical and Engineering Training.

2. Applicant was initially appointed as a Wireless Supervisor in the scale of Rs. 425 - 700 (Rs. 1400 - 2300 - Revised) under the second respondent. He says that he is presently working as an Assistant Instructor (Electronics), a post carrying the pay scale of Rs. 1640 - 2900. He along with the post was transferred as per A-1 dated 10.10.84 issued by the second respondent from Kochi to Vishakapatnam. He joined at Vishakapatnam. His services, according to him, were made use of against the post of Assistant Instructor (Electronics) which was remaining vacant from the time of his joining. He is not paid the scale of pay attached to the post of Assistant Instructor (Electronics) on the ground that he is not eligible to be considered for appointment by promotion to that post.

3. Respondents resist the O.A. contending thus:- For want of a candidate with requisite qualification, one post of Assistant Instructor (Electronics) is lying vacant at Vishakapatnam Unit of Central Institute of Fisheries, Nautical and Engineering Training (CIFNET for short) since 1983. The applicant was transferred to Vishakapatnam to perform the duties of Wireless Supervisor along with the post in the year 1984 to keep going on the electronic functions of the Unit. It is not correct to say that he is




working as Assistant Instructor (Electronics) at Vishaka -
patnam and as such the contention that second respondent
has refused to grant him pay of Assistant Instructor
(Electronics) is also not correct. He being the staff
in the Electronics Section of the Unit, he has to look
after other works also apart from the work of Wireless
Operation. He is not eligible for the post of Assistant
Instructor (Electronics) as per the Recruitment Rules.

4. The first prayer is to quash A-17. A-17 is the
order dated 17.10.96 appointing the 4th respondent as
Assistant Instructor (Electronics) in the CIFNET. It is
submitted that the 4th respondent has resigned from the
post. That being so, this prayer has become infructuous.

5. The important question to be considered in this
O.A. is whether an incumbent discharging the duties attached
to a higher post is entitled to the pay attached to that
post though not qualified to hold that post.

6. It is the undisputed fact that the applicant is
holding the post of Wireless Supervisor. According to
him, after his transfer as per A-1 to Vishakapatnam and
joining there, he was discharging the duties of Assistant
Instructor (Electronics) and therefore, he is entitled to
the pay of Assistant Instructor (Electronics). There is
no order appointing the applicant as Assistant Instructor
(Electronics). There is no order also directing the
applicant to look after the duties of Assistant Instructor
(Electronics). From the materials available it appears
that the applicant was discharging the duties of Assistant
Instructor (Electronics) to an extent. As per the Recruitment
Rules, for the post of Assistant Instructor (Electronics)
one should have a Degree in Electronics or Telecommunication




Engineering or Degree in Electrical Engineering with specialisation in Wireless Communication and electronics or telecommunication or Diploma in Electronics or Telecommunication Engineering or Diploma in Electrical Engineering with specialisation in Wireless Communication and Electronics or Telecommunication with 2 years experience or Degree in Science with certificate of proficiency as 2nd Class Radio-Telegraphy Operator issued by the Ministry of Communication. Admittedly, the applicant is not having the qualification prescribed as per the Recruitment Rules for the post of Assistant Instructor (Electronics).

7. Learned counsel appearing for the applicant drew our attention to the ruling in Randhir Singh Vs Union of India and others (1982 SCC (L&S) 119) and argued that the applicant is entitled to the pay attached to the post of Assistant Instructor (Electronics). In the said ruling it is specifically held that:

"It is well known that there can be and there are different grades in a service, with varying qualifications for entry in a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for an higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of officers into two grades with different scales of pay. The principle of 'equal pay for equal work' would be an abstract doctrine not attracting Article 14 if sought to be applied to them."

It is further held in the said ruling:

"We are of the view that the principle 'equal pay for equal work' is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing different scales of pay do identical work under the same employer."

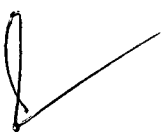


8. Here, it is not a case of no classification or irrational classification. The pay scale attached to the post of Assistant Instructor (Electronics) is admissible only to those who are possessed of the qualification prescribed for the same by the Recruitment Rules and holds that post or directed by the competent authority to perform the duties of that post. Higher qualification for the post of Assistant Instructor (Electronics) compared to the post of Wireless Supervisor, the post which the applicant is holding, reasonably sustain the classification of these two posts with different scales of pay. Since the applicant is admittedly not having the qualification prescribed by the Recruitment Rules for the post of Assistant Instructor (Electronics), this ruling is of no help to the applicant.

9. Another ruling relied on by the learned counsel for the applicant is Selvaraj Vs. Lt. Governor of Island, Port Blair and others, JT 1998 (4) SC 500, wherein it has been held that:

"Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee."


There, it was not a case that the appellant was not qualified to hold the post of Secretary (Scouts) and though he was not a regular promotee, he was working in an officiating capacity. Here, it is not so. It cannot be so for the simple reason that the applicant does not possess the qualification prescribed for the post of Assistant Instructor (Electronics). That being so, this ruling also is of no help to the applicant.



10. In Sita Devi and others Vs. State of Haryana, JT 1996 (7) SC 438, it has been held:

"Classification on the basis of educational qualifications has always been upheld by this Court as reasonable and permissible under Article 14."

11. Learned counsel for the applicant relying on Judhistir Mohanty Vs. State of Orissa and others, 1997 SCC (L&S) 132, argued that when the applicant is directed to perform the duties of a higher cadre during that period, the applicant is entitled to payment of salary attached to the post, if the applicant had performed the duties in that post. It is a settled position that if the Government for want of candidate, directs an officer in the lower cadre to perform the duties of the post in the higher cadre, during that period, necessarily, the incumbent would be entitled to the payment of the salary attached to the post, if the incumbent has performed the duties in that post. Performing duties in that post means performing duties by an incumbent who is qualified to perform the duties. It does not mean that an incumbent who is not qualified to perform the duties of an higher post, if discharges, is entitled to the pay attached to the higher post. Quality of work performed by different sets of persons holding different jobs have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to the efficiency in service which may justify differences in pay scales on the basis of criteria. It could be said that the applicant was discharging the duties of Assistant Instructor (Electronics) in the true sense of it only if he is possessed of the qualification prescribed for the post of Assistant Instructor (Electronics). In the absence of qualification for the applicant to hold



the post of Assistant Instructor (Electronics) even accepting the case of the applicant that he was discharging the duties attached to the post of Assistant Instructor (Electronics), he is not entitled to the pay attached to the post of Assistant Instructor (Electronics). The pay prescribed for the post of Assistant Instructor (Electronics) is only for those persons who hold the prescribed qualification. An incumbent discharging the duties of higher post will be entitled to the pay attached to the higher post only if that incumbent is possessed of the qualification prescribed for holding the higher post. That being so, the applicant is not entitled to the scale of pay attached to the higher post i.e., the post of Assistant Instructor (Electronics) even if he was discharging the duties attached to that post.

12. The prayer of the applicant to direct the respondents to consider him for regular absorption/appointment as Assistant Instructor (Electronics) duly granting all the consequential benefits from 18.10.84 is only to be negatived/ for the simple reason that the applicant is not possessed of the qualification prescribed for the post of Assistant Instructor (Electronics) as per the Recruitment Rules.


13. According to the applicant, respondents had been promising that the Recruitment Rules would be suitably amended and that the applicant would be absorbed as Assistant Instructor (Electronics). The departmental respondents say that no promise was given to the applicant that he will be appointed as Assistant Instructor (Electronics) since no one in the department can give such an assurance and any appointment can be made according to the rules. It is perfectly so.

14. It is stated by the departmental respondents in the reply statement that the applicant was informed of the proposal to amend the Recruitment Rules with promotional



avenues. Such a proposal cannot be of any avail to the applicant.

15. The applicant has also sought in the alternative a prayer for a transfer back to Kochi Unit of CIFNET. The ground stated for transfer back to Kochi Unit by the applicant is that the certificate of proficiency - Radio Telephony General (Maritime) Licence which he had been holding would expire by 1.5.89 and in order to get the same renewed, he should have atleast three months of radio watch keeping service and there is no Radio Station at Vishakapatnam. According to respondents, as there was no licence for Radio Station at Vishakapatnam Unit, in order to provide three months radio watch keeping service to the applicant for the purpose of renewal of his licence, R-1 order dated 15.9.88 was issued temporarily transferring him to the Kochi Unit for a period of 3 months. The applicant refused to accept the same and proceeded on leave instead of utilising the opportunity provided to him. He went on extending the leave on medical ground. Since the department doubted the genuineness of his illness, he was referred to the District Medical Officer of Health, Ernakulam, for medical examination on 8.3.89. He did not report for medical examination. He has refused to make use of the offer/opportunity provided to him for renewal of Radio Telephone Licence. When he was directed to appear for medical examination, not only he refused to appear for medical examination but tendered his resignation as per letter dated 21.6.89. Subsequently, he withdrew the letter of resignation and same was rejected by the department. He moved the Tribunal for acceptance of the withdrawal of resignation by filing O.A. 492/91. That O.A. was allowed by the Tribunal on technical grounds.



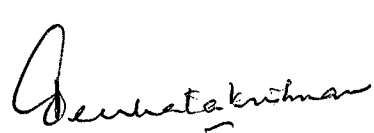
16. The alternative prayer for transfer back to Kochi Unit is to be seen in the said background. It is for the Administration to effect transfers and postings depending upon the exigencies of service. The wheels of Administration should run smooth. No incumbent can insist on getting a posting at a particular place of his choice. If the alternative prayer to direct the respondents to transfer back the applicant to Kochi Unit is granted, it will be virtually passing an order transferring the applicant back to Kochi by the Tribunal. It is not for the Tribunal to pass transfer and posting orders. It is for the Administration.

17. The Original Application is accordingly dismissed.
No costs.

Dated the 28th of August, 1998.



A.M. SIVADAS
JUDICIAL MEMBER



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

LIST OF ANNEXURES

1. Annexure A1: A true copy of the Office Order No. II-1/84/Adm. dated 10.10.84 issued by the second respondent.
2. Annexure A17: A true copy of the Office Order in File No.13.15/93-Adm Vol.II dated 17.10.96 issued by the second respondent.
3. Annexure R1: True copy of the Office Order No.PF. 354/Adm. dated 15.9.1988 issued by Shri R. Sathiaraja Director, Office of the Central Institute of Fisheries, Nautical & Engineering Training, Cochin-16.

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