

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 408/89 199
~~KAXXKX~~

DATE OF DECISION 31.5.90

V.A.Uthaman Applicant (s)

M/s M.C.Cherian,
Saramma Cherian &
T.A.Rajan Advocate for the Applicant (s)

Versus
The Director, Central
Institute of Fisheries Respondent (s)
Nautical & Engg. Training &
Another.

P.Santhosh Kumar, 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? Yn
2. To be referred to the Reporter or not? Yn
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 6th July, 1989, the applicant who has been working as Senior Deckhand in the Central Institute of Fisheries Nautical & Engineering Training (CIFNET), Cochin has prayed that the orders at Annexures IX, X, XI, XII and XV denying him the regular pay scale of Bosun from June 1987 should be set aside and that the respondents be directed to pay him salary, allowance and increments in the Bosun's scale during the entire period when he was working as such.

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He has also prayed that the respondents be directed to promote him as Bosun on a regular basis in one of the available vacancies. The brief facts of the case are as follows:

2. The applicant is a member of the Scheduled Caste and is holding a substantive post of Senior Dockhand in the revised scale of Rs 975-1540. The next higher post is that of Bosun in the revised scale of Rs 1600-2660 for which Senior Deckhands with three years of service and with Fishing Second hand Competency Certificate issued by the Mercantile Marine Department are eligible. The applicant admittedly is the senior-most Senior Deckhand. The applicant passed the examination for Fishing Second-hand Certificate in 1985 and was being given promotion as Bosun against leave and temporary vacancies. His first officiating chance came about from 13.1.86 to 31.3.86 vide Annexure-A2 dated 31.5.86. Though the applicant asserts that from 1.5.86 onwards he has been working continuously as Bosun till June 1987, the various promotion orders produced by him show that he has been officiating as Bosun with higher scale of pay intermittently for limited periods as indicated below:

From 1.5.86 to 30.5.86 (vide para 3 of Ann.III)

From 4.6.86 to 22.6.86 (vide para 6 of Ann.IV)
24.6.86 to 21.7.86 {

From 1.9.86 to 28.2.87 (vide Annexure-V)

From 2.4.87 to 1.10.87 (vide Ann.VI)

From 2.10.87 to 31.1.88 (vide Ann.IX)

..contd.

From 1.2.88 to 30.4.88 (vide Ann.XIII)
From 1.5.88 to 31.7.88 (vide Office Order
No.13-3/88 Adm. dt.
18.6.88)

From 1.8.88 to 31.10.88 (Vide Ann.X)

From 1.11.88 to 8.11.88 and
30.11.88 to 31.1.89
16.2.89 to 28.2.89
1.3.89 to 26.3.89 (Vide Ann.XI)

From 2.5.89 to 31.5.89 (Vide Ann.XII)

His grievance is that after June 1987, instead of being given salary in the prescribed scale of pay of Bosun, he was being allowed the salary as Senior Deckhand with an additional pay of Rs 200 in accordance with impugned orders at Annexures IX, X, XI and XII. His representations for getting regular ^{pay} scale of Bosun were rejected by the impugned order at Ann.XV on 26.6.89 relying upon the latest provisions in FR 35. When he did not get even regular promotion, he filed an application before this Tribunal in OA 259/86 which was decided by judgement dated 8.9.86 (Annexure-XVI) on the basis of an assurance given by the respondents that the promotion claimed will be considered as and when a suitable vacancy arises. The applicant claims that in violation of that assurance the respondents only have been giving him ^{only} ad hoc promotions even though clear vacancies were available and posts of Bosun were filled up by transferring hands from other stations of CIFNET and even engaging outsiders as Casual Bosun.

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3. The respondents have stated that there was ^{no} regular vacancy of Bosun at Cochin. Even though he was being paid the regular pay scale of Bosun before June 1987 while officiating as Bosun intermittently against short term vacancies, in view of the provisions of FR 35 as amended by the Government instructions dated 18.7.86 and 29.7.87, he could not be given the regular pay scale of Bosun as he was not promoted on a regular basis.

4. In his rejoinder the applicant has stated that from May 1986 to June 1987 he was paid the salary of Bosun in the revised scale of Rs 1600-2660 and he could not be deprived of that regular pay scale after June 1987 under FR 35. He has explained that there are 4 fishing vessels at Cochin and as admitted by the respondents, each fishing vessel is to be manned by 2 Bosuns. Against ^{thus} the 8 Bosuns [✓] required in Cochin, there are only 6 Bosuns. Thus 2 vacancies are clearly available in Cochin and he being the senior-most Senior Deckhand he is being denied regular promotion even though he is fully qualified for the post. On the other hand, he was transferred as Senior Deckhand to Madras. All this is due to the malice of the respondents generated by his approaching the Tribunal for redressal.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is admitted by the respondents that the

applicant is the senior-most Senior Deckhand with all necessary qualifications for promotion as Bosun . It is also admitted that till June 1987 he was being given the prescribed pay scale of Bosuns but from June 1987 onwards his pay scale was reduced to that of Senior Deckhand even though he was officiating as Bosun and a special pay of Rs 200 only was given. It is also admitted that the applicant had approached this Tribunal for regular promotion as Bosun in OA 259/86 when he was not granted leave for appearing in the SSLC examination and was denied regularisation in the post of Senior Deckhand. It is also admitted that the applicant was suddenly transferred as Senior Deckhand from Cochin to Madras during the pendency of this application and he filed another application before this Tribunal in OA 91/90 against the order of transfer.

6. It is an established law that one cannot be reduced in rank and pay without any notice. The (Annexure-V) applicant was promoted by order dated 22.5.87 as Bosun in the scale of Rs 1600-2660 for a period of 6 months. There was no reference in the order that his pay will be in the lower scale of Senior Deckhand. By another order dated 22.12.87 his officiation as Bosun was further extended from 2.10.87 to 31.1.88 (Ann. IX) but in that order his pay was restricted to that of Senior Deckhand under FR 35 with a special pay of Rs 200. However, his pay was reduced from June 1987. We feel that apart from

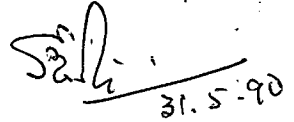
the
the violation of principles of natural justice,
denying him the regular pay scale of Bosun is violative
also.
of the principle of equal pay for equal work. Further,
since admittedly the applicant was the senior-most
Senior Deckhand and was fully qualified to hold the
post and admittedly there was no other eligible Senior
Deckhand for promotion to the post of Bosun, the
applicant should not have been denied the pay scale of
Bosun under FR 35. This is more so because, as far back
as in September 1986, in OA 259/86 the respondents
had given an assurance that the claim of the applicant
will be entertained as and when a suitable vacancy
arises. In the facts and circumstances, we allow this
application to the extent of directing the respondents
that for the periods the applicant officiated as a
Bosun from June 1987 onwards, he should be given the
regular pay scale of Bosun in accordance with FR 22C.
The impugned orders at Annexures IX, X, XI, XII and XV
are
in so far as they are contrary to the aforesaid direction,
will stand modified. As regards the applicant's regular
promotion as Bosun, we direct that he should be
immediately considered for regular promotion as Bosun
in accordance with the prescribed procedure and if he
is found fit should be placed on the panel for regular
continuous or intermittent appointment to any vacancy of

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Bosun which may arise in future. We also direct that no appointment of Bosun on a casual basis be made unless and until the applicant is accommodated as Bosun in the same or any other vacancy. In the circumstances, there will be no order as to costs.



(A.V. Haridasan)
Judicial Member



(S.P. Mukerji)
Vice Chairman