

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Monday the 11th March, 2002

Coram: Hon'ble Mr. Justice Birendra Dikshit - Vice Chairman
Hon'ble Mr. B.N. Bahadur, Member (A)

O.A. 995 OF 1999

D.M. Khan,
R/o Khalil Pan Centre,
New Gautam Nagar,
Flat No.2, Govandi,
Mumbai.
(By Advocate Miss Sujoy Bambalwad)

- Applicant

Versus

1. Union of India
through the Secretary,
Fisheries,
Ministry of Food Processing Industry,
New Delhi.

2. The Director General,
Fisheries Survey of India,
Botawalla Chamber,
Sir P.M. Road, Fort,
Mumbai.

3. The Zonal Director,
Fishery Survey of India,
Sasoon Docks,
Colaba, Mumbai.
(By Advocate Shri C. Anand)

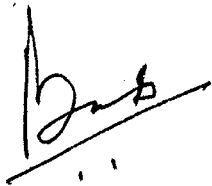
- Respondents

ORAL ORDER

By Hon'ble Mr. B.N. Bahadur, Member (A) -

The applicant has come up before this Tribunal seeking the relief for a direction to the respondents to regularise his services as Chief Engineer Grade - II and to continue as such. Consequential reliefs of pay fixation etc. are also sought as listed in Para 8 of the O.A.

2. The applicant joined the services of the respondents as Junior Deckhand in 1972, promoted as Junior Deckhand-cum-Greaser in 1979 and Senior Deckhand in 1986. It is clarified to us at



...2/-

the time of hearing in open court that he is on the Engine side vis-a-vis the hierarchy chart. He states that he has appeared for certificate of competency as Engine Driver and in 1986 the applicant passed the examination for certificate of competency as Engine Driver (Exhibit - A).

3. The applicant further states that he was appointed as Chief Engineer Grade - II in 1987 on ad-hoc basis and has continued to work as such till this date. In fact during arguments it was pointed out that he was still working on the post. Thus for some 15 years he was working on this post albeit on ad-hoc basis. The applicant goes on to show the work he has done.

4. The respondents have filed parawise reply where they have accepted the bare facts and service details but have taken the stand that the position of certificate of competency of Engine Driver (Fishing Vessel) does not make the applicant eligible for promotion as Chief Engineer Grade-II in the absence of Secondary School Leaving Certificate. In fact this is the main stand taken and the plea that the OA deserves to be dismissed.

5. We have seen all papers in the case and have heard the learned counsel as the case went on on a number of occasions. Today the matter has crystallised. The main argument is that even though the applicant does not possess SSLC he possesses technical requirements and that he is successfully ^{working on} fishing vessels for over 15 years as Chief Engineer Grade - II. This

B.S.

shows that the applicant is competent for this post. Some other technical points were sought to be made by the learned counsel for the applicant to the effect that service is continuous and applicant was not demoted even for a day.

6. The learned counsel for the respondents has taken the main stand of non-eligibility of promotion of the applicant due to his not possessing the SSLC qualifications. Shri C. Anand learned counsel for the respondents, stated that on a number of occasions he was asked to obtain this qualification but the applicant failed to do so. Further Shri Anand also stated that for the last decade or so the respondents have been making efforts and advertising posts through UPSC but are unable to get competent / qualified persons; hence ^{the} need to continue the applicant.

7. We have carefully gone through the papers and the arguments made and note that in the Recruitment Rules promotion is one of the methods. It is also stated in Column 8 that educational qualifications for direct recruits are applicable to promotees also. This means that apart from technical qualifications, SSLC is also required along with three years experience in Fishing Vessels.

8. It was admitted by the learned counsel for the respondents, on instructions from his officers present in Court, that the technical qualifications possessed by the applicant is indeed the one required under rules. Also, he clearly has more than three years in fact, 15 years experience as ad-hoc Chief



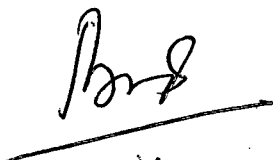
...4/-

Engineer Grade II. The only point is that the applicant does not possess SSLC qualifications.

9. On the one hand we are definitely bound to abide by the recruitment rules laid down and hence cannot give relief by judicial determination by way of relaxation of qualification of Matriculation. On the other hand we cannot overlook the fact that the applicant worked for 30 years with the respondents which includes service of some 15 years as Chief Engineer Grade II, albeit ad-hoc. The fact of the matter is that firstly he has the required technical qualifications. Secondly, he has been running Fishing Vessels and this fact has not been controverted even though his appointment was ad-hoc. We also note that the respondents themselves have stated that despite constant efforts through advertisement they have not been able to get person/s to fill in the post of Chief Engineer Grade - II. Be that as it may. We have seen that the applicant has ample experience and possesses technical qualification. We also note that there is a specific provision in the recruitment rules for relaxation. The relevant portion reads as under:-

"Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified in particular, the qualification regarding experience is relaxable in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes for posts reserved for them."

On the one hand as stated above we would not like to relax the rule ourselves and provide the relief sought. On the other, in view of the position as discussed, we feel that it will be a fit



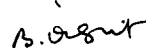
....5/-

case where the department should refer the matter to UPSC, pointing out all these facts and providing them with a copy of this judgment. The UPSC is an independent body and has the power under Recruitment Rules to agree/disagree to relax the rules. They should be requested by Respondents to consider the case of the applicant taking into account the provision for relaxation with reference to the merits of the case which have been discussed above. A decision may be taken ultimately by the Department as per advise of the UPSC. In our view the disposal of OA on these lines would meet the ends of justice, in the given facts and circumstances peculiar to this case. We must note that the title of the post as Chief Engineer is rather misplaced. The organisation would be well advised to look at the designation of its personnel. A look at the heirarchy chart will explain why we say so.

10. In view of the discussion, this OA is disposed of with direction in Para 9 above. The reference to the UPSC should be made within a period of two months from the date of receipt of a copy of this order. No costs.



(B.N. Bahadur)
Member (A)



(Birendra Dikshit)
Vice Chairman

mb