

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 807/97

Date of Decision: 09.11.2001

Smt. Vaijayanti Rane & 2 ors

Applicants

Shri M.s. Ramamurthy.

Advocate for Applicants

Versus

Union of India & 7 others

... Respondents

Shri V. Rajagopal  
Shri P. Manohar.

Advocate for Respondents 1 to 3  
advocate for Respondent No.5

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)  
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

*Shanta S*  
(SMT. SHANTA SHASTRY)  
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 807/97

THIS THE 9 TH DAY OF NOVEMBER, 2001

CORAM: SHRI S.L. JAIN. . MEMBER (J)  
SMT. SHANTA SHASTRY . MEMBER (A)

1. Smt. Vaijayanti Rane,  
employed as Senior Scientific Assistant  
in Fishery Survey of India,  
Ministry of Food Processing  
Industries, Botawala Chambers,  
Sir P.M. Road, Fort,  
Mumbai-400 001.
2. Mrs. S.Verghese,  
employed as Senior Scientific  
Assistant in Fishery Survey of  
India, Ministry of Food Processing  
Industries, Botawala Chambers,  
Sir P.M. Road, Fort,  
Mumbai-400 001.
3. Mr. Ashok Kadam, Scientific Assistant  
in Fishery Survey of India, Ministry  
of Food Processing Industries, Botawala  
Chambers, Sir P.M. Road, Fort,  
Mumbai-400 001. ... Applicants

By Advocate Shri M.S. Ramamurthy.

Versus

1. Union of India, through  
The Secretary, Government of India,  
Ministry of Food Processing  
Industries, New Delhi.
2. Director General,  
Fishery Survey of India,  
Ministry of Food Processing  
Industries, Botawala Chambers  
Sir P.M. Road, Fort,  
Mumbai-400 001.
3. Union Public Service Commission,  
Dholpur House, Shahajan Road,  
New Delhi-110 011.
4. Paul Pandian, Fishing Gear  
Technologist in the Department  
of Ocean Development  
(on deputation) as Scientific Officer,  
Fishing Harbour, Cochin, Kerala.

5. A. Tiburtius,  
working as Junior Fishing  
Gear Technologist, Fishery Survey  
of India, Goa Base, GOA.
6. J.E. Prabhakar Raj,  
working as Senior Scientific Assistant,  
Fishery Survey of India, Madras Base,  
Fishing Harbour, Royapuram,  
MADERAS (CHENNAI)
7. N. Jagannath, working as Senior  
Scientific Assistant, Fishery  
Survey of India, Vizhakapatnam Base,  
Vizhakapatnam, ANDHRA PRADESH. . Respondents

By Advocaote Shri V. Rajagopal for R1 to R3  
Shri P.Manohar for R5.

O R D E R

Smt. Shanta Shastry. Member (A)

The main grievance of the applicants in this case is that Respondents No.4 and 5 were selected for the post of Fisheries Scientist in the Fisheries Survey of India when they are not qualified. The applicants were not selected. They have therefore, prayed for the following reliefs:

- (a) that this Hon'ble Tribunal be pleased to hold and declare that the selection of Respondents 4 and 5 as Fisheries scientist (Group 'A') (Gazetted) is unjustified, in violation of the Recruitment Rules, 1992, and/or an act of favoritism and therefore the same is bad in law and null and void;
- (b) that the Respondents 1 to 3 be permanently restrained from appointing Respondents 4 and 5 to the post of Fisheries Scientist (Group 'A') (Gazetted).
- (c) that the provision in the Fishery Survey of India (Senior Fisheries Scientist/Senior Fisheries Scientist (Monitoring and Extension). Fisheries Scientist and Service Engineer (Mechanical) Recruitment (Amendment) Rules, 1992, under column 7 relating to

*Recruitment/Promotion of Fisheries Scientist, prescribing one year practical experience in sea fishing out of 3 years experience in Marine Fisheries, be declared arbitrary and violative of Articles 14, 15 and 16 of the Constitution of India and therefore null and void.*

- (d) *that Respondents 1 to 3 be directed to hold a fresh selection for filling up the posts of Fisheries Scientist (Group 'A' Gazetted), in any case for two posts against which Respondents 4 and 5 have been selected.*
- (e) *that the Applicants be permitted to file this application jointly is the cause of action is the same and the reliefs sought for are common to all and they have a common interest in the subject matter of this application.*
- (f) *that such other and further order or orders be passed as the facts and circumstances of the case may require.*
- (g) *that costs of this application be provided for.*

The applicant No.1 was first appointed in the Fisheries Survey of India as a Scientific Assistant in the scale of Rs.1400-2300 vide order dated 16.11.1992. Thereafter in 1995 the applicant No.1 appeared for interview conducted by the UPSC for the post of Senior Scientific Assistant and she was duly selected and appointed as Senior Scientific Assistant in the scale of Rs.1640-2900 around 03rd May, 1995. The applicant continues to work in the same post. The applicant No.2 is also employed as Senior Scientific Assistant so also the applicant No.3 in the same organisation.

3. An advertisement No.9 was published in the Employment News of India dated 14-20 May, 1994 inviting applications by the UPSC for filling up of four posts of

Fisheries Scientists in the scale of Rs.2200-4000 in different offices/bases of Fisheries Survey of India. There are regular recruitment rules known as Fisheries Survey of India (Senior Fisheries Scientists)/Senior Fisheries Scientists (Monitoring & Extension)/ Fisheries Scientists & Service Engineers (Mechanical Recruitment (Amendment) Rules, 1992. According to these recruitment rules, the requisite qualifications are master's degree in Zoology or Marine Biology or Fisheries Science or Oceanography or equivalent or post graduate diploma in the Fisheries Science from the Central Institute of Fisheries Education Bombay or equivalent. Three years experience in Marine Fisheries of which one year must be practical experience in sea fishing, has been prescribed. The age for the recruitment is 35 years relaxable upto 5 years in the case of Government servants. The UPSC had certain discretion to relax the qualification in case of candidates otherwise well qualified. Also relaxation power is there for experience in the case of candidates belonging to SC and ST if at any stage of selection, the UPSC is of the opinion that sufficient number of candidates from SC/ST possessing the requisite experience are not likely to be available to fill up the vacancies. The applicant No.1 and respondents 4, 5,6 & 7 applied in response to the advertisement. They were called for interview by the UPSC on 24.4.1996 vide their communication dated 19.3.1996. Only respondents 4 and 5 who belong to OBC were selected along with one general candidate and one ST candidate.

4. It is the case of the applicant<sup>✓</sup> that respondents 4 & 5 did not possess one year's experience of sea fishing and yet they were selected while the applicant<sup>no. 1</sup> was not selected on the ground that she could not produce a certificate that she had one year's sea fishing experience. She was in fact interviewed provisionally and she was asked to furnish documentary proof from the competent authority showing that she had at least one year's practical experience in sea fishing as on 26.9.94. The applicant resubmitted the certificate but she did not possess one year's sea fishing experience i.e. 365 days. She could not be paid TA/DA. The applicant No.1 contends that she was told specifically that one year's experience in sea fishing means experience of 365 days and not even one day less.

5. On coming to know of the selection of Respondents 4 and 5 the applicant No.1 filed her representation on 29.7.1997. She pointed out that Respondent No.5 had only 160 days of sea fishing experience as on 02.6.1994 i.e. less than six months, which is in violation of the recruitment rules. The applicant No.1 also objected that when there was only one post reserved for OBC, how two persons namely Respondents 4 and 5 could be selected against one post for OBC. She requested the respondents to stop the appointment of Respondents 4 and 5.

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6. In support of her contention that the Respondent No.5 does not possess one years sea fishing experience, the applicant No.1 has produced the Fisheries Survey of India's annual reports for the years 1991-92, 1992-93 and 1993-94 showing the sea fishing experience in respect of Respondent NO.5. According to applicant No.1, there was no reply to her representation. She sent a reminder on 08.7.1997 again without any response. Once again the applicants No.1,2, 3 and one Shri K. Govindraaj working as Junior Fisheries Scientist at Porbander Base sent a joint representation on 08.9.1997 and complained against the selection of Respondents 4 and 5. It was pointed out that there is no uniformity or comparability in the certificates issued to the different candidates by the FSI Officers at Bases and Headquarters and requested to cancel the selection of all the candidates who did not fulfil the essential criterion of practical experience of one year in sea fishing.

7. According to the applicant No.1 normally experience in sea fishing is gained by going on cruises which are organised at different bases and at the Headquarters of the Fishery Survey of India. Each cruise is for a maximum of twenty days. An officer can attend ordinarily four cruises in a year. It is therefore, impossible for any employee to acquire 365 days (one year) experience in sea fishing in three

years. At the maximum, one can have practical experience of 240 days only. According to applicant No.1 this is an improper provision. This is absurd and arbitrary provision and not at all practicable. The applicant No.1 has further pleaded that coming to sea fishing experience, in so far as lady staff are concerned, it is far from satisfactory. It is impossible under the existing conditions to stay on the seas as a member of the cruise for 20 days at a stretch. There are no proper arrangements for separate stay etc., for ladies. Even male employees are not able to stay for 20 days. On many occasions the cruise themselves get terminated earlier because of technical and other problems. Therefore, the candidature of lady employees is required to be viewed with due sympathy and consideration which has not been done in the case of applicant No.1. The applicant states that she cannot hope to become a class-I officer because of impracticable provision in the recruitment rules. The applicant further contends that there is only 27% reservation mentioned in advertisement for the OBC. Therefore, of the four posts only one post can be given to OBC. However, the respondents have selected two OBC candidates. This is illegal and unauthorised. The applicant NO.1 has only 68 days of sea fishing experience. Applicant No.1 further submits that Respondents 6 and 7 possess all the qualifications required as per recruitment rules and they also have sea fishing experience inspite of that they have not been selected.



8. The respondents have filed their reply including Respondent No.3 i.e. UPSC which conducts the interview. The respondents maintain that they strictly followed the recruitment rules. There is no breach. Respondents 4 and 5 have been selected to the post of Fisheries Scientists after due consideration by the UPSC. The respondents deny that there is any violation of the orders relating to reservation relating to OBC category. Only one candidate has been selected against OBC quota. The other OBC candidate has been selected on his own merit without relaxation of any essential qualification of age etc., against general <sup>m</sup> quota. He has been treated as general candidate and adjusted against the share of unreserved vacancies. Thus, Shri Paul Pandian respondent No.4 has been recommended as OBC candidate. He too fulfilled all essential qualification required as per recruitment rules and Respondent No.5 i.e. Shri A.Tiburtius has been selected on his own merits as required for general candidates. There is, therefore nothing illegal or unauthorised about the selection of Respondent No.5, though he belongs to OBC.

9. The UPSC i.e. Respondent No.3 submits that the Commission has gone by the certificates furnished by Respondents 4 and 5 and since they were considered suitable by the Selection Board, they were recommended for appointment to the post of Fisheries Scientists. Respondents No.6 and 7 were also duly considered,

however, they were not found suitable. So also the applicant No.1 was not found suitable apart from the fact that the applicant No.1 could not produce the certificate of one year's practical sea fishing experience.

9A The respondents have also taken objection that the Applicant NO.1 has not asked for any relief for herself i.e. she has not asked that she should be selected. She is only questioning the selection of Respondents 4 and 5. It ~~is~~<sup>is</sup>, therefore, amounts to public <sup>interest</sup> litigation and therefore, this Tribunal cannot be the forum for adjudicating <sup>on</sup> such an issue. The applicant No.1 has further argued in the rejoinder pointing out that respondents 4 and 5 did not possess one year's experience and all the certificates given are not correct certificates. Respondent No.5 has also filed his reply in the matter and has taken the same stand that he does possess one year's sea fishing experience. Further, Respondent No.5 belongs to the fishing community. It is <sup>anywhere</sup> ~~not~~ stated that one year's experience means 365 days experience, 240 days experience would be reasonable experience. In any case Respondent No.5 avers that he has the necessary experience. The Zonal Director, Fisheries Survey of India, Vishakapatnam base has also filed an affidavit stating that he has issued the certificate dated 23.4.1996 in the case of Shri A. Tiburtius i.e. respondent No.5. The applicant No.1 has raised other query that the respondents 4 and 5 were

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as on 26.9.94

required to produce a certificate in ~~1994~~ at the time of interview, whereas both the certificates of respondents 4 and 5 have been issued in 1996. Apparently, the original certificates given in 1994 have been suppressed.

10. We have heard the learned counsel for both the sides and have given careful consideration to the arguments advanced. We find that as far as applicant No.1 is concerned, she though possessing all the other qualifications for recruitment to the post of Fisheries Scientist, did not possess one year's practical experience in sea fishing. She herself has admitted that she had only put in 68 days. She has taken the plea that being a lady, it was not possible for her to get 365 days of experience in sea fishing. The applicant No.1 has also stated that respondents 6 and 7 possess the practical experience of one year in sea fishing. Thus, it cannot be said that it is impossible to get one year's experience as claimed by applicant No.1. The recruitment rules have been in force since 1992. The applicant has not questioned the recruitment rules earlier when they were issued. It is only after she could not be selected that she has raised her voice against the provision of one year's practical experience in sea fishing made in the recruitment rules. As far as applicant No.1 is concerned, in our view, she has no case and she has rightly not been selected.

11. In regard to respondents 4 and 5 the UPSC has gone by the certificates furnished by them in regard to their practical experience of one year in sea fishing. It is no doubt that these certificates have been issued in 1996, however, they have been issued at the time of the interview. One has been issued on 09.4.1996 in the case of Respondent NO.4. The other one has been issued on 23.4.1996 i.e. just one day before the interview. Therefore, it cannot be said that there were some other certificates or that these certificates are not valid.

12. This post of Fishery Scientist is a selection post and since the selection board found the respondents 4 and 5 suitable, they were recommended for appointment. Though the respondents 6 and 7 possess all the requisite qualification, they were not found suitable by the selection board and the applicant No.1 apart from being disqualified on the ground that she does not possess one year's practical experience in sea fishing at the time of interview, was not found suitable, otherwise also, even in the provisional interview. Therefore, both on merits as well as on qualification, the applicant No.1 could not be recommended for appointment to the post of Fisheries Scientist.

13. As already pointed out by respondent No.5, the applicant NO.1 is challenging the selection of respondents 4 and 5. The only prayer of the applicant is to set aside their selection. There is no prayer to

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select her and appoint her. Thus, it amounts to a public interest litigation<sup>L</sup> argued by the learned counsel for the respondents. We are of the considered opinion that it is not a public interest litigation for the reason that the applicant was one of the candidates for the said selection. As such, she is entitled to challenge the said selection on any of the grounds or irregularities occurred during the said selection, the Respondent No.3 cannot be blamed as it has acted on the certificates issued by Zonal Director, Fisheries Survey of India, Vishakapattanam base which are not found to be truthful one.

14. Public Interest Litigation means where the person who has moved the Tribunal or the Court has no exclusive personal interest in the litigation, he may be one of the beneficiaries along with others or not at all, which is not the position in the present case. The applicant was having and is having a personal interest in the case as she being one of the candidates, not selected on account of the fact that she did not possess one year's practical experience in Fisheries which is the eligibility criteria. Keeping the said facts in mind, on perusal of Exhibit I filed by the applicant, we are of the considered opinion that Respondent No.4 Paul Pandian and Respondent No.5 A.Tiburtius also do not possess one year's practical experience in Fisheries which is the eligibility criteria, as such, the selection cannot be up-held.

15. In the result, OA. deserves to be partly allowed and is allowed. It is declared that selection of Respondents No.4 & 5 in view of Advertisement No.9 published in the Employment News of India dated 14 - 20 May, 1994 as Fisheries Scientist (Group-'A') (Gazetted) is in violation of Recruitment Rules, 1992, as such null and void. No order as to costs.

*Shanta S*  
(SMT. SHANTA SHASTRY)

MEMBER (A)

*S.L. Jain*  
(S.L. JAIN)

MEMBER (J)

mrj.