

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00638/2014

Friday, this the 17th day of August, 2018

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

Mr. P.V. Thampi, S/o. Vithaman, Aged 59 years,
Senior Technician (2), Mechanical Engineering Service (MES) Workshop,
National Institute for Interdisciplinary Science and Technology,
Industrial Estate P.O., Pappanamcode,
Thiruvananthapuram – 695 019,
Residing at 'Anaswara' Kuzhivila, Kalliyoor P.O.,
Thiruvananthapuram – 695 042. **Applicant**

(By Advocate – Mr. Firoz K.M. & Mrs. Shameena Salahudheen)

V e r s u s

1. National Institute for Interdisciplinary Science and Technology,
Council of Scientific and Industrial Research, Industrial Estate P.O.,
Pappanamcode, Thiruvananthapuram – 695 019,
Represented by its Director.
2. The Director,
National Institute for Interdisciplinary Science and Technology,
Council of Scientific and Industrial Research, Industrial Estate P.O.,
Pappanamcode, Thiruvananthapuram – 695 019.
3. Administrative Officer,
National Institute for Interdisciplinary Science and Technology,
Council of Scientific and Industrial Research, Industrial Estate P.O.,
Pappanamcode, Thiruvananthapuram – 695 019.
4. Council of Scientific and Industrial Research,
Anusandhan Bhavan 2, Rafi Marg, New Delhi – 110 001,
Represented by its Director General.
5. Joint Secretary (Administration),
Council of Scientific and Industrial Research,
Anusandhan Bhavan 2, Rafi Marg,
New Delhi – 110 001. **Respondents**

(By Advocate – Mr. S.R.K. Prathap, ACGSC)

This Original Application having been heard on 10.08.2018, the Tribunal on 17.8.2018 delivered the following:

O R D E R

Per: Ashish Kalia, Judicial Member -

The relief sought by the applicant are as under:

- i. To call for the records leading to Annexures A1 to A14 and to direct the respondents to grant assessment promotion to the applicant from Group II (4) to Group II (5), without insisting for first class in Diploma in Engineering, at least with effect from the date on which assessment promotion was granted to his juniors and to revise his pay and other benefits and to disburse all consequential monetary benefits to him in the revised scale with interest for the delay caused within a time frame as fixed by this Hon'ble Tribunal;
- ii. To call for records leading to Ann. A5 and Ann. A14 and to set aside the same insofar it insists for first class in diploma for assessment promotion from Group II (4) to Group II (5);
- iii. To declare that the acts of respondents insofar insisting for first class in Diploma in Engineering for grant of assessment promotion to the applicant from Group II (4) to Group II (5) and denial of benefit of Ann. A11 Office Memorandum being a Scheduled Caste incumbent is illegal, arbitrary and unjust;
- iv. To declare that Ann. A5 and Ann. A14 insofar it insists for first class in diploma for assessment promotion from Group II (4) to Group II (5) and insofar denies relaxation to the applicant from passing diploma with first class, despite the fact that he is a Scheduled Caste incumbent is illegal, arbitrary and is violative of Article 14 of the Constitution of India.
- v. To direct respondents 2 and 5 to consider and pass orders on Ann. A6, A9 and A13 representation submitted by the applicant within a time frame as fixed by this Hon'ble Tribunal after hearing the applicant;
- vi. To mould and issue any other order or direction appropriate in favour of the applicant in the circumstances of the case;
- vii. To grant cost of this application to the applicant.

2. The brief facts of the case are as under:

Applicant has entered into the service of 1st respondent on 26.7.1982 as

Laboratory Assistant – Group II[1]. He was promoted as Group II [2] on 26.7.1989. Thereafter the applicant was promoted as Group II [3] on 26.1.2000 on completion of 7 years service and further promoted as Group II [4] on 26.1.2005. His present designation is Senior Technician [2]. Earlier there were only 4 grades in Group II {i.e, Group II[1], Group II[2], Group II[3] & Group II[4] re-designated as Technician (1), Technician (2), Sr.Technician and Sr.Technician (2)}. On 8.8.2012 CSIR introduced one more level in Group II, ie, Group II[5]-Sr.Technician (3) with Grade Pay of Rs.4800/-, which will be available to those incumbents of the feeder Grade Group II[4] (Sr.Technician (2)) who have acquired the entry level qualifications of erstwhile Group III[1]. Applicant has completed residency period of 7 years commencing from 26.1.2005 to 26.1.2012 in Group II[4] [Senior Technician (2)]. He has also acquired prescribed qualification Diploma in Mechanical Engineering with 62% of marks. Therefore, he is eligible for promotion to Group II[5]. It is the grievance of the applicant that he was not considered for promotion to Group II [5]. Hence, the present Original Application is filed.

3 Notices were issued to the respondents and they put appearance and filed their reply statement.

4 Factual position is admitted by the respondents in the reply statement. It is submitted in reply statement that the applicant was considered for Group II[5] with Grade Pay of Rs.4800/. But he was not considered for assessment promotion to Group II[5] as he possess only 2nd class in Diploma in

Mechanical Engineering. Though he got 62% marks, he passed Diploma in 2nd class only as he passed one paper subsequently. Thus he is not eligible for promotion to Group II[5]. The two persons named by him in the Original Application Mr.N.Sudhilal and Mr.T.P Poulose were given assessment promotion to Group II[5] since they have acquired first class Diploma in Mechanical Engineering.

5 The applicant has also filed rejoinder thereto and along with the rejoinder applicant has relied upon CSIR Service Rules 1994 for recruitment of Scientific Technical & Support Staff.

6 Heard the counsel for the parties Mrs.Shameena Salahudheen and Mr.S.R.K.Prathap, ACGSC and perused the documents.

7 The short question raised before this Tribunal by the applicant herein is that whether he is eligible for promotion despite having 62% of marks and second class Diploma or not ?

8 Applicant has annexed with the Original Application a copy of Diploma acquired by him from Government of Kerala, Department of Technical Education on 2nd March 1991. Herein it is mentioned that he has been graded as 2nd class. He has also annexed the mark sheet where he got out of 1400 marks 867 which shows that he has got 62% marks. By Annexure A-5 the Deputy Secretary CSIR vide its order dated 8.8.2012 has clarified that entry level qualifications of erstwhile Grade III [1] accordingly

para 2.2.2 of the revised MANAS stands amended by which Senior Technician Grade 3 has been granted Grade Pay of Rs.4800/- . Respondents vide their letter dated 21.5.2014 has written to Joint Secretary, Administration of CSIR that the CSIR themselves has recommended the promotion to Group II[5] without insisting first class. Meaning thereby, the Department very much willing to consider the applicant therein to be promoted as Grade II[5] but due to the technicalities he was considered for the same.

9. The Supreme Court judgment cited by the applicant herein **State of U.P v. Ram Gopal, (AIR 1981 SC 1041)** the Hon'ble Apex Court had categorically found that rules and procedures regulating conditions and appointment of service must be reasonable and if it is unworkable in its operation and if it leads to arbitrariness, then the same is violative of Article 14, 16 and 21 of the Constitution of India. Such rules and procedures are liable to be quashed. The citation of the case is **Narayanan Nair v. State of Kerala, 1988(1) KLJ 589**. If a glance to the mark sheet of the applicant, it is visible that he is having 62% of marks which falls within the category of first class. Perhaps the applicant has acquired one paper later he has been awarded a degree of 2nd class. Be that as it may be, the department himself has taken his case and if the department has applied the Rules of CSIR Rules, 1994, which is annexed as Annexure A-15 with additional reply, has stipulated as follows:

“8. Qualifications, Experience & Age Limits for Recruitment:
8.1 The minimum qualifications/experience and maximum age limits for recruitment at various levels are as follows:-

Group & Grade	Qualification	Experience in years	Age limit in years
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Note: 1. The period of experience in the requisite discipline/area of work where prescribed shall be counted w.e.f the date of acquiring the prescribed minimum educational qualification for that Group/Grade.

GROUP-I (750/940)	10 th Standard/SSC with 50% marks in aggregate	One	28
Group II			
Group II(1)	SSC/10 th standard with 50% marks in the aggregate and ITI certificate of 2 years duration in relevant trade. OR SSSC/HSC/12 th with relevant technical subjects and a min. of 60% marks in aggregate	Nil	28
Group II(2)	SSC/10 th standard with 50%marks in the aggregate and ITI certificate of 2 yrs. Duration in relevant trade OR SSSC/HSC/12 th with relevant technical subjects and a min. of 60% marks in aggregate	Three	28
GROUP-II(3) <u>1400-2300</u>	SSC/10 th standard with 50% marks in the aggregate and ITI certificate of 2 yrs. Duration in relevant trade OR SSSC/HSC/12 th with relevant technical subjects and a min. of 60% marks in aggregate	Six	28
GROUP II [4] <u>(1640-2900)</u>	SSC/10 th standard with 50% in the aggregate and ITI certificate of 2 yr duration in relevant trade OR SSSC/HSC/12 th with relevant technical subjects and a min. of 60% marks in aggregate	Nine	30

GROUP II(5)	SSC/10 th standard with 50% marks in the aggregate and ITI certificate of 2 yrs. Duration in relevant trade OR SSSC/HSC/12 th with relevant technical subjects and a min of 60% in aggregate	Twelve	35	
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10 Hence 60% marks is required for promotion to Group II[5]. In our considered opinion, applicant is very much eligible for the above said post Group II[5]. The department should have been considered him in terms of the amended CSIR Service Rules 1994 to recruitment of Scientific Technical & Support Staff. The present case is a crystal clear case. Here the respondents have not applied their mind in positive manners, only technicalities has come into plea and ordered to deny the promotion to the applicant. Thus we hold that the applicant is eligible to get promotion to the post of Group II[5] in terms of CSIR Rules which is binding on the respondents.

11 We dispose of the present Original Application with a direction that the applicant may be considered for the said post with effect from the time when his promotion was due. This present Original Application is succeeds and allowed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER
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(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

Original Application No.180/00638/2014

List of Annexures of the applicant

Annexure A-1 - A true copy of the relevant extract of the Secondary School Leaving Certificate of the applicant.

Annexure A-2 - A true copy of the order dated 01.06.1982 issued by the 2nd respondent to the applicant.

Annexure A-3 - A true copy of the certificate issued by the Joint Controller of Technical Examinations (Kerala) to the applicant.

Annexure A-4 - A true copy of the proceedings by which two years early assessment promotion was given to the applicant from Group II (3) to Group II (4).

Annexure A-5 - A true copy of the said proceedings dated 08.08.2012 issued by the 4th Respondent.

Annexure A-6 - A true copy of the representation dated 04.02.2013 submitted by the applicant before the 2nd Respondent.

Annexure A-7 - A true copy of the communication issued by the 2nd Respondent or 5th Respondent dated 13.02.2013.

Annexure A-8 - A true copy of the proceedings dated 24.05.2013 of the 3rd respondent whereby assessment promotion was given to Sri. N. Sudhilal.

Annexure A-9 - A true copy of the representation submitted by the applicant dated 25.09.2013 before the 1st Respondent.

Annexure A-10 - A true copy of the letter dated 25.03.2014 issued by the 3rd Respondent to the 5th Respondent.

Annexure A-11 - A true copy of the office memorandum dated 29.07.2008.

Annexure A-12 - A true copy of the relevant extract of revised merit and normal assessment scheme (MANAS), for scientific, technical and support staff of the 4th Respondent.

Annexure A-13 - A true copy of the representation dated 04.04.2014 submitted by the applicant before the 4th Respondent.

Annexure A-14 - A true copy of the letter dated 30.05.2014 issued by the 5th respondent.

Annexure A-15 - A true copy of the CSIR Service Rules 1994 to recruitment of scientific technical & support staff.

Annexure A-16 - A true copy of the communication issued by the Joint Secretary (administration) of CSIR.

List of Annexures of the Respondents

Annexure R1 - True copy of the letter No. 5-1(88)/2010-PD dated 21.05.2014 issued by the Deputy Secretary.
