

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00181/2018

Thursday, this the 12th day of April, 2018

CORAM:

**Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member**

M.Subash
S/o.S Mahalingam
Mechanical Supervisor (Sr), Cochin base of
Fishery Survey of India, Cochin
Residing at IX/351, Mulamoottil House
Vijaya Road, Maradu P.O, Ernakulam 682 304 **Applicant**

(By Advocate – Mr.Shafik.M.A)

V e r s u s

- 1 Union of India, represented by Secretary
Department of Animal Husbandry, Dairying
and Fisheries, Ministry of Agriculture and
Farmers Welfare, Krishi Bhawan
New Delhi- 110 001
2. The Under Secretary to the Government of India
Department of Animal Husbandry, Dairying
and Fisheries, Ministry of Agriculture and
Farmers Welfare, Krishi Bhawan,
New Delhi- 110 001
3. The Secretary to the Government of India
Department of Expenditure, Ministry of Finance
New Delhi-110 001
4. The Director General
Fishery Survey of India, Botawala Chambers
SIR P.M.Road, Mumbai-400 001 **Respondents**

(By Advocate – Mr.P.R.Sreejith,ACGSC)

This Original Application having been heard on 16.03.2018, the
Tribunal on 12.4.2018 delivered the following:

ORDER ON INTERIM RELIEF

Per: Mr.U. Sarathchandran, Judicial Member

Applicant is presently working as Mechanical Supervisor under respondent No.4. He joined the service on 1.11.1991 in the pay scale of Rs.1640-2900/-. The next promotion he can aspire for is to the post of Service Engineer. As per the Recruitment Rules Mechanical Supervisor with 8 years of service is entitled for promotion as Service Engineer. Applicant laments that despite rendering service for nearly 21 years, no promotion was granted to him despite he has been granted first financial upgradations under the ACP Scheme with effect from 1.11.2003 on completion of 12 years and MACP with effect from 1.11.2011 on completion of 20 years regular service. He states that he is already drawing more than the scale of pay attached to the post of Service Engineer.

2. Applicant states that out of the 9 sanctioned posts of Service Engineers under Respondent no.4, only two posts have been filled and 7 posts are vacant till date. He is the 4th in line for promotion out of the 10 Mechanical Supervisors. He sent Annexure A-7 representation to respondent no.4 for considering him for promotion. No DPC was conducted and no action was taken thereon. He again submitted Annexure A-8 representation followed by Annexure A-9, another representation. Applicant is aggrieved by Annexure A-1 Office Order dated 4.11.2017 abolishing 4 posts of Service Engineers under Respondent no.4 thereby diminishing his prospects of getting promoted to the next higher Grade i.e, Service Engineer. He, therefore, prays

for a declaration regarding his entitlement to be promoted as Service Engineer and also for directing the respondents to convene DPC for promotion .

3. We have heard Shri.Shafik.M.A, learned counsel for the applicant and Shri.P.R.Sreejith, ACGSC, learned counsel for the respondents. The grievance of the applicant is now centered around Annexure A-1 office order abolishing 4 posts of Service Engineer in the Organisation headed by respondent no.4. According to the applicant Annexure A-1 is arbitrary, illegal and depriving him of the legitimate expectation of getting promoted to the post of Service Engineer before his retirement.

4. It is settled position that creation/abolition of posts pertains to the field of policy and is within the exclusive discretion and jurisdiction of the State which cannot interfered with unless the same is violative of fundamental rights and is against the Constitutional restrictions. Applicant contends that he has been maintaining a legitimate expectation for being promoted. True, right to be considered for promotion is a fundamental right envisaged under Article 16 of the Constitution. However, it cannot be said that the applicant indeed has a legitimate right for promotion. It is also well settled position of law that mere chances of promotion are not conditions of service unlike a right to be considered for promotion which indeed is a term of service.

5. Hon'ble Supreme Court had occasion to consider whether the Courts/Tribunals have right to interfere with the creation/abolition of posts

etc. The Apex Court observed in *PU Joshi & Others v. Union of India and Others* (2003) 2 SCC 632 as follows:-

“ Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service. “

6. In the light of the legal principles contained in the aforequoted observations of the Hon'ble Apex Court, we are of the view that the applicant cannot challenge the impugned Annexure A-1 office order abolishing the posts of Service Engineers in the Organisation of respondent no.4. Nevertheless, since he has sent representations high-lighting his right to be considered for promotion, we are of the view that the representations can be considered and disposed of by the respondents notwithstanding the pendency

of the O.A. With a direction to the respondents to do so, we hold that applicant is not entitled to the interim relief as prayed for. Ordered accordingly.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

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List of Annexures

Annexure A-1 - True copy of the Office Order F.No.2-27/2017 Admn V dated 4.11.2017 issued by the 2nd respondent

Annexure A-2 - True copy of the Recruitment Rules for service engineers notified in the Gazette of India by 1st respondent

Annexure A-3 - True copy of the order F.No.1-7/2004 E.11 dated 21.2.2006 issued by the 4th respondent

Annexure A-4 - True copy of the Order No.F.1-29/2010 E.11 dated 13.8.2012 issued by the 4th respondent

Annexure A-5 - True copy of the screenshot of the staff strength of the FSI shown in the web site of FSI

Annexure A-6 - True copy of the seniority list of Mechanical Supervisors as on 1.1.2016 published by the FSI

Annexure A-7 - True copy of the representation dated 4.12.2012 submitted to the 4th respondent

Annexure A-8 - True copy of the representation dated 1.4.2015 submitted to the 4th respondent

Annexure A-9 - True copy of the representation dated 17.8.2015 submitted by the applicant

Annexure A-10 - True copy of the representation dated 12.1.2018 submitted by the applicant
