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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00795/2015

Monday, this the 29th day of October, 2018

C O R A M :

**HON'BLE MRS.P.GOPINATH
HON'BLE MR.ASHISH KALIA**

**.... ADMINISTRATIVE MEMBER
....JUDICIAL MEMBER**

Telson Noronha,
Aged 50 years,
S/o Antony Noronha, Scientist 'C',
Centre for Marine Living Resources & Ecology (CMLRE),
Ministry of Earth Sciences,
Block-C, VI Floor,
Kendriya Bhavan,
P.B.No.5415,,
CEPZ P.O. Cochin – 682 037.

...Applicant

(By Advocate – Mr.M.A.Shafik)

V e r s u s

1. Union of India,
Represented by the Secretary,
Ministry of Earth Sciences,
Government of India,
New Delhi – 110 011.
2. The Under Secretary
to the Government of India,
Ministry of Earth Sciences,
Government of India,
'Prithivi Bhavan',
Lodhi Road,
New Delhi 110 011.
3. The Director (Admn),
Department of Ocean Development,
Ministry of Earth Sciences,
Lodhi Road,
New Delhi.
4. The Director,
Centre for Marine Living Resources
& Ecology (CMLRE),
Ministry of Earth Sciences,
Block-C, VI Floor,
Kendriya Bhavan,

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PB No.5415,
CEPZ PO,
COCHIN -682 037.

5. Sri V.Ramanathan,
STA, Integrated Coastal & Marine Area Management,
(ICMAM) Project Directorate,
NIOT Campus,
Velachary Tambaram Main Road,
Pallikaranni,
Chennai – 600 100. ...Respondents

(By ACGSC – Mrs.Mini R.Menon)

This Application having been heard on 24th October 2018, the Tribunal on 29.10.2018 delivered the following :

ORDER

Per : Mr.ASHISH KALIA, JUDICIAL MEMBER

The applicant is aggrieved by the denial of promotion w.e.f. the date of his junior was promoted i.e., 19.11.2009. The grievance of the applicant is that inspite of the order passed by this Tribunal which is upheld by the Hon'ble High Court of Kerala, still he has not been given promotion from 2009.

2. The brief facts of the case are that the applicant is presently working as Scientist 'B' in the pay band-3 Rs.15600-39100 with Grade Pay of Rs.5400/- under Respondent-4. While he was working in the post of Senior Technical Assistant in the same office, the seniority list was issued by the Respondent-2 in which the applicant was shown junior to Respondent-5 and because of the said seniority list he was further promotion to Scientist -'B'. Aggrieved by denial of the promotion the applicant approached this Tribunal in OA No.253/2010.

This Tribunal has held:

“Annexure A1 and Annexure A19 orders to the extent they are prejudicial to the applicant are quashed. Annexure A2 order

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dated 03.10.2008 is also quashed. We declare that the applicant is entitled to reckon his service as STA with effect from 16.05.1996 for the purpose of seniority and direct the respondents to grant him arrears of salary restricted to 3 years prior to the date of filing this OA and afterwards within a period of 60 days from the date of receipt of a copy of this order. No order as to costs."

3. It is further submitted that even the order which is quashed by this Tribunal is the promotion granted to the 5th respondent as Scientist 'B' and as per this the Respondent-4 should have promoted the applicant to the post of Scientist 'B' w.e.f. 19.11.2009, the date on which his junior, Respondent-5 was promoted to the said post and subsequent qualifying service and arrears of the salary should also be paid. Aggrieved by the non-compliance of the order passed by this Tribunal the applicant has filed C.P. No.155/2012. In spite of the order passed by this Tribunal 5th respondent was continued in the promoted post and was reckoned for further promotion and being evaluated for further promotion as Scientist 'C' on completion of eligible period of three years of service, i.e. from 19.11.2009, even prior to the applicant was given initial promotion as Scientist 'B' w.e.f. 14.06.2013. Aggrieved by this he approached this Tribunal for redressal of his grievance.

4. Notices were issued to the respondents and they have put up appearance and filed reply statement.

5. The respondents have submitted in their reply that there was no specific direction to promote the applicant in the order dated 11.11.2011. In furtherance to observation in the order the matter regarding the promotion to the applicant was taken up with UPSC and the applicant was promoted to Scientist 'B' w.e.f. 14.06.2013 and the applicant was given benefit under FR 22(1)(a)(1) on notional basis w.e.f. 19.11.2009 (i.e., the date of promotion of Shri V.Ramanathan,

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Respondent-5) with actual benefit w.e.f. 14.06.2013. It is further submitted that the 5th respondent had been holding the post of Scientist 'B' consequent upon promotion to that post based on the recommendation of UPSC.

6. Since the order passed by this Tribunal in OA No.253/2010 did not contain any direction to demote Respondent-5 in the said OA, the respondents did not demote him to the lower post.

7. Lastly it is submitted by the respondents that residency in the feeder cadre is a pre requisite for promotion to the post of Scientist 'C'. The incumbent through experience gained in the feeder post is expected to acquire the skills and knowledge equivalent to those possessed by the direct recruits. Promotion entails a number of requirements like vigilance clearance, minimum levels of performance discernible through entries in the Annual Performance Appraisal Reports etc and the applicant appears to be attempting to pole vault over these requirements by resorting through litigation.

8. Heard counsel for the parties, Mr. Shafik for the applicant and Mrs. Mini R. Menon for respondents, perused the records and appreciated the judgment cited.

9. On careful perusal of the judgment passed by this Tribunal, the Tribunal has categorically held that the applicant is entitled for reckoning his service as Senior Technical Assistant w.e.f. 16.05.1996 for the purpose of seniority and directed the respondents to grant him arrears of salary restricted to 3 years prior to the date of filing of the OA and the OA was filed in 2010.

10. The department also went in appeal by filing OP (CAT) No.1148/2012 before the Hon'ble High Court of Kerala and the High Court has also upheld the judgment passed by this Tribunal on the

basis of the judgment of Hon'ble Supreme court in K.Madhavan's case and it was also observed by Hon'ble High Court that the applicant is entitled as STA and is to be treated w.e.f. 19.05.1996 and the consequences will follow as found by the Tribunal. Thereby, the applicant is entitled to get back his seniority as STA w.e.f. 19.05.1996 and further promotions thereto in a same way as his juniors were getting.

11. We are not in agreement with the respondents' objection that promotion to Scientist 'B' to 'C' shall be done by UPSC by considering the ACRs etc. Because his case was never sent for consideration of promotion at the appropriate time by reckoning his service as STA from 16.05.1996. Since there was no direction for demotion of Respondent-5, they have allowed further promotion to the post of Scientist 'C' who is admittedly a junior to the applicant.

12. We find no reason as to why the applicant should not have been given similar treatment. His right to promotion cannot be denied due to technicalities and sending his case to UPSC or otherwise. These are the procedural aspect which should not come in the way of legitimate claim of the applicant for getting promotion to the post of Scientist 'C', particularly when this Tribunal and Hon'ble High Court of Kerala is of the similar view and directed for consideration of seniority with consequential benefits, pursuance to the order passed by the Hon'ble Apex Court in Madhavan's case.

13. Thus we hereby hold that the merit is on the side of the applicant, he is entitled for promotion to the post of Scientist 'C' w.e.f the date of promotion of Respondent-5 i.e., 19.11.2009 as Scientist 'B' and subsequent promotion as Scientist 'C'. This exercise should be completed by the respondents within a period of 90 days and arrears

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of the salary on the revised pay is restricted to the three years prior to the date of filing of this OA.

14. With this observation OA stands allowed. No order as to costs.

(Dated this the 29th October, 2018)

(ASHISH KALIA)
JUDICIAL MEMBER

(P.GOPINATH)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00795/2015

- 1. Annexure A1** – True copy of the Office order No.MoES/31/05/2007-Estt. Dated 02.07.2013 issued by the 2nd Respondent.
 - 2. Annexure A2** – True copy of the OM No.MoES/31/05/2007-Estt dated 25.11.2013 issued by the 2nd Respondent.
 - 3. Annexure A3** – True copy of the Office Order No.MoES/19/02/2010-Estt dated 23.07.2013 issued by the 2nd Respondent.
 - 4. Annexure A4** – True copy of order dated 11.11.2011 of this Hon'ble Tribunal in O.A. No.253/2010.
 - 5. Annexure A5** – True copy of the Letter No.84/12/Rjl/Adv/Chn. Dated 25.01.2012 issued by the Department of Legal Affairs.
 - 6. Annexure A6** – True copy of the Judgement dated 04.10.2012 of the Hon'ble High Court in O.P.(CAT) No.1148/2012.
 - 7. Annexure A7** – True copy of the OM F.No.MoES/31/05/2007-Estt dated 27.12.2012 issued by the Under Secretary of the 1st Respondent.
 - 8. Annexure A8** – True copy of the Office order No.MoES/19/2/2010-Estt dated 27.12.2012 issued by the 2nd Respondent.
 - 9. Annexure A9** – True copy of the Officer order No.MoES/25/32/2009-Estt dated 06.03.2013 issued by the Under Secretary to the 1st Respondent.
 - 10. Annexure A10** – True copy of the order dated 30.07.2013 of this Hon'ble Tribunal in CP(C) No.155/2012 in OA No.253/2010.
 - 11. Annexure A11** - True copy of the Representation dated 30.07.2013 submitted before the 2nd Respondent.
 - 12. Annexure A12** - True copy of the order dated 06.02.2015 of this Hon'ble Tribunal in MA No.180/00528/2014 & M.A.No.180/00607/2014 in CP (C) nO.155/2012 in OA No.253/2010.
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