

OA.No.170/00255/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00255/2017

DATED THIS THE 12th DAY OF JUNE, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

S. Gopala Krishna
S/o.G.Siddaiah
Aged 48 years
Working as Assistant Engineer (Civil)
Central Institute of Coastal Engineering for Fishery
Opp. to ISRO Qrts., Jalahalli Post
Bengaluru-560 013.
Residing at No.24, 6th Cross
Jnanajyothinagara, Ullala Road
Bengaluru-560 056.

.....Applicant

(By Advocate Sri A.R.Holla)

Vs.

1. Union of India
By Secretary
Ministry of Agriculture and Farmers Welfare
Department of Animal Husbandry
Dairying & Fisheries
Krishi Bhavan
New Delhi-110 001.

2. Union Public Service Commission
Dholpur House
Shahjahan Road
New Delhi-110 069.

3. Ramesha S.S.
S/o.Shivananjaiah
Aged about 33 years
Working as Junior Engineer
Central Institute of Coastal Engineering for Fishery
Opp.ISRO Headquarters
Jalahalli
Bangalore-560 013.
....Respondents

(By Advocates Sri K.Dilip Kumar for R1 & 2 and Sri B.S.Venkatesh Kumar for R3)

O R D E R

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- i. To quash the Order F.No.4-10/2016-Admn.V dated 15.12.2016, issued by the respondent No.1, Annexure-A7.*
- ii. Direct the respondents to consider the applicant for promotion to the post of Assistant Director (Civil Engineering) in pursuance of his representation dated 31.01.2017, Annexure-A8.*

2. According to the applicant, he has been working as Assistant Engineer(Civil Engineering) in the respondent organisation i.e. Central Institute of Coastal Engineering for Fishery(CICEF). The next higher post is Assistant Director(Civil Engineering). In terms of the relevant recruitment rules, 2003(Annexure-A1), the post of Assistant Director is required to be filled up 66.66% by promotion failing which by deputation failing both by direct recruitment and 33.33% by way of deputation failing which by direct recruitment. There are three sanctioned posts of Assistant Directors of which two posts were filled up by promotion and one post has fallen vacant since 2.6.2014. The respondent No.1 issued a circular dtd.22.4.2015 for filling up the vacant post of Assistant Director(Civil Engineering) on deputation basis. However, no application was received. Another circular was issued on 28.12.2015 to fill up the vacant post of Assistant Director(Civil Engineering) on deputation basis but again there was no response to the same. In the meanwhile the Recruitment Rules of 2003 were superseded by the new Recruitment Rules,2016 which was notified on 31.5.2016(Annexure-A4). In terms of the new recruitment rules, the post of Assistant Director is required to be filled up 25% by promotion failing which by deputation and 75% by direct recruitment.

3. The applicant submits that when both the attempts to fill up the post on deputation failed, respondent No.1 approached respondent No.2 vide communication dtd.14.7.2016 seeking his advice on further course of action in the matter. The 2nd respondent opined vide letter dtd.26.7.2016 to take further necessary action as per provisions of recruitment rules(Annexure-A5). In between, the Director, CICEF sent a proposal to the 1st respondent to fill up the vacancy by promotion vide Annexure-A6. In response to the same, respondent No.1 issued an order dtd.15.12.2016(Annexure-A7) holding that the instant vacancy has to be filled up by direct recruitment only in view of the amendment in the recruitment rules which provides for recruitment of Assistant Directors 25% by promotion and 75% by direct recruitment. It was held that since the earlier vacancies were filled by promotion exceeding 25% quota, there is no scope for filling up the post on promotion basis now.

4. The applicant submits that he has been working as Assistant Engineer for more than 4 years and as such he is eligible to be considered for the post of Assistant Director by promotion. He made a representation on 30.1.2017 with a request to consider him for promotion to the post of Assistant Director(Civil Engineering). However, there is no response to the same and apparently the respondents are in the process of filling up the vacant post by way of direct recruitment. He submits that as per the DOPT instructions, the first vacancy has to be filled up by promotion only and as such the applicant should be considered for promotion to the said post. Further the new recruitment rules do not provide for carrying forward of the earlier vacancies and as such the recruitment requires to be made considering the vacancies afresh. Therefore, he prayed for granting the relief as sought for.

5. The respondents in their reply statement submits that there are three sanctioned posts of Assistant Director(Civil Engineering) in Central Institute of Coastal Engineering for Fishery(CICEF), Bangalore. Two posts were filled by promotion on 16.6.2011 and on 30.7.2012. Hence as per the recruitment rules in existence on the date of vacancy, the third vacancy caused due to promotion of the then incumbent to the post of Deputy Director w.e.f. 2.6.2014, was proposed for filling up by deputation. However no applications were received in response to vacancy circular issued on 22.4.2015 as well as on 28.12.2015 and hence the proposal of filling up the vacancy post of Assistant Director(Civil Engineering) on deputation has become infructuous. Accordingly, they decided to resort to direct recruitment.

6. The respondents further mentioned that the earlier recruitment rules of 2003 was modified in the year 2016 under which 25% by promotion failing which by deputation and 75% by direct recruitment. As per the modified recruitment rules, the sanctioned strength to the post of Assistant Director(Civil Engineering) is three. Out of the three posts, two posts have already been filled through promotion as per the provision of Recruitment Rules notified in 2003. Hence, the current vacancy falls under the next mode of recruitment i.e. direct recruitment. Accordingly, representation submitted by the applicant has been disposed of by the Ministry. The applicant is therefore not entitled to any relief as prayed for by him.

7. The respondent No.3 i.e. impleaded respondent has also filed a reply statement in which he has referred to the old recruitment rules of 2003 as well as new recruitment rules of 2016 and the factual position as mentioned earlier and submits that the post which remained unfilled during the subsistence of 2003 recruitment rules ought to be filled up only by the said rules because the

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2016 recruitment rules have come into force on the date of their publication in the official gazette. In other words, the new recruitment rules can be operated only for the posts which arise for filling up subsequent to the date of publication of the new recruitment rules. In terms of 2003 recruitment rules, the vacancies which are available have to be filled up by way of direct recruitment. Only persons in service can apply for deputation provided if they fulfil the conditions laid down for deputation whereas for direct recruitment any one qualified for the post will become eligible to compete. Therefore, he contended that the stand taken by the respondents to fill up the post by way of direct recruitment is correct and the contention of the applicant is unjustified.

8. We have heard the Learned Counsel for the parties. The Learned Counsels for the applicant, official respondents and 3rd respondent have made submissions practically reiterating the factual position and their points as highlighted by them in the OA and the reply statements.
9. We have carefully considered the facts of the case and submissions made by all the parties. The only point to be considered in this case is whether the available vacant post of Assistant Director(Civil Engineering) in Central Institute of Coastal Engineering for Fishery(CICEF) has to be filled up by way of promotion as contended by the applicant or by way of direct recruitment as highlighted by the respondents in the context of the recruitment rules. It is an admitted fact that there are three posts of Assistant Director(Civil Engineering) in the said Institute. According to the Recruitment Rules, 2003, 66% i.e. two posts are required to be filled up by way of deputation/promotion failing which by way of direct recruitment and one post has to be filled up by way of deputation failing which by way of direct recruitment. In 2016 Recruitment Rules which replaced the earlier Recruitment Rules of 2003, 75% posts have

to be filled up by way of direct recruitment and 25% by way of promotion. In the changed rules of 2016, two posts of Assistant Director have to be filled up by way of direct recruitment and one post by way of promotion. As has been submitted by the respondents, against the three available/sanctioned posts of Assistant Director(Civil Engineering), two posts are now held by persons by way of promotion. Then logically whether the recruitment rules of 2003 or the recruitment rules of 2016 are taken into consideration, the available vacancy has to be filled up by way of direct recruitment now that the effort to fill it up by way of deputation did not succeed. It has been mentioned that efforts by the Institute to take the persons on deputation could not succeed in spite of making two attempts. Therefore, the stand taken by the respondents that the available post should be filled up by way of direct recruitment appears to us as justified.

10. On detailed consideration of the facts and circumstances of the case, we are of the view that the stand taken by the respondents in their communication dtd.15.12.2016 saying that the instant vacancy needs to be filled up by direct recruitment only appears fully justified and there is no ground for any interference in the said stand of the respondents. Therefore, we hold that the contention of the applicant is devoid of any merit and consequently the OA stands dismissed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.170/00255/2017

Annexure-A1: Copy of notification dtd.7.11.2003
Annexure-A2: Copy of the circular dtd.22.4.2015
Annexure-A3: Copy of the circular dtd.28.12.2015
Annexure-A4: Copy of notification dtd.31.5.2016
Annexure-A5: Copy of the letter dtd.26.7.2016
Annexure-A6: Copy of the letter dtd.5.7.2016
Annexure-A7: Copy of the order dtd.15.12.2016
Annexure-A8: Copy of applicant's representation dtd.30.1.2017
Annexure-A9: Copy of the letter dtd.13.2.2017

Annexures with reply statement:

Annexure-R1: Copy of the Ministry's letter dtd.6.7.2017

Annexures with reply statement filed by 3rd respondent:

Annexure-A: Copy of DOPT No.AB.14017/13/2012-Estt.(RR)(1349)- frequently asked questions.
Annexure-B: Copy of judgment in Y.V.Rangaiah's case
Annexure-C: Copy of letter Ref.No.A.12(25)/2013-CEF dated 9.1.2017 from Director, CICEF, Bangalore.
