

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

Original Application No.180/00673/2015

Wednesday, this the 19th day of December, 2018

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

Mukesh .M, aged 28 years
 S/o.J.Muraleedharan Pillai
 Scientific Assistant
 INS Zamorin, Indian Naval Academy
 Naval Academy P.O, Ezhimala,
 Cannanore-670 310, Residing at Quarter No.337,
 Type II, CERA, Indian Naval Academy,
 Ezhimala, Kannur-670 310 **Applicant**

(By Advocate – Mr.T.C.G Swamy)

V e r s u s

1. Union of India represented by the
 Secretary to the Government of India
 Ministry of Defence (Navy), South Block
 New Delhi – 110 011
2. The Chief of the Naval Staff
 Integrated Headquarters (for P&A)
 Ministry of Defence (Navy), 'C' Wing
 Sena Bhavan, New Delhi – 110 011
3. The Flag Officer Commanding-in-Chief
 Headquarters Southern Naval Command
 Naval Base, Cochin – 682 004
4. The Commanding Officer
 INS Zamorin, Ezhimala, Naval Academy P.O
 Cannanore – 670 310

5. Shri.V.S.Vishal
Scientific Assistant
INS Zamorin
Indian Naval Acedemy, Naval Academy P.O
Ezhimala, Cannanore-670 310
6. Shri.Sanil.V.Nair
Scientific Assistant
INS Zamorin
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7. Shri.P.Mahesh
Scientific Assistant
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8. Shri.P.Praveen
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9. Shri.P.T.Rohith
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10. Shri.K.V.Sandeep
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11. Shri.A.K.Ajikumar
Scientific Assistant
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12. Shri.K.K.Sreehari
Scientific Assistant
INS Zamorin
Indian Naval Academy, Naval Academy P.O
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13. Shri.A.Dhinesh
Scientific Assistant
Directorate of Indigenisation
5th Floor, Chanakya Bhavan
New Delhi – 110 011

..... **Respondents**

(By Advocate – Mr.M.R.Rajendran Nair Associates for R6,7,10 & 11, Mr.N.Anilkumar, SCGSC for R1-4 and Mr.M.R.Hariraj for R5)

This Original Application having been heard and reserved for orders on 17.12.2018, the Tribunal on 19.12.2018 delivered the following:

O R D E R

Per: Mr.E.K.Bharat Bhushan, Administrative Member

The applicant is working as a Scientific Assistant in Pay Band-2 + Grade Pay of Rs.4200/- under respondent nos.2-4 and is aggrieved by alleged erroneous assignment of his seniority in the feeder cadre of Lab Assistant and the consequential assignment of lower placement in the panel/promotion to the post of Scientific Assistant. Copies of the Seniority List of Lab Demonstrator/Lab Assistant dated 13.8.2014 issued by the 3rd respondent and

the draft seniority list of Lab Demonstrator/Lab Assistant for the year 2014-15 dated 30 Jan 2015 by the 4th respondent are at Annexures A-1 and A-2. A copy of the promotion order passed, based on the alleged wrong assignment of lower position in the seniority list dated 24.4.2015 issued by the office of the 2nd respondent is at Annexure A-3. The reliefs sought in the Original Application are as below:

- “(i) Declare that the method of assignment of seniority in A1 and A2 as between persons selected and appointed in terms of A5, A6 and A7 is arbitrary, discriminatory, unreasonable and hence, unconstitutional;
- (ii) Call for the records leading to the issue of Annexures A1 and A2 and quash the same in so far as they determines the inter-se seniority between the applicant and the respondents 5 to 13 herein purely based on the different examinations conducted on different subjects and the different interviews conducted by the different subject experts;
- (iii) Call for the records leading to the issue of Annexure A3 and quash the same in so far as it places the respondents 5 to 13 above the applicant;
- (iv) direct the respondents to re-draw the seniority list based on the principles indicated in A13 and direct further for re-arranging A3 in that order, duly granting all the consequential benefits emanating there from;
- (v) Award costs of and incidental to this application;
- (vi) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. The facts of the case are as follows:

The cadres of Lab Demonstrators/Lab Assistants are maintained separately for Basic Science (BS), Mechanical Engineering (ME) and Electrical Engineering (EE) respectively. A copy of the notification published in Employment News in March 2009 for appointment against the vacancies in the various cadres of different disciplines are at Annexure A-4.

3. It is stated that separate and specific examinations were conducted for the 3 different disciplines as mentioned above. Applicant is a holder of Diploma in Electrical Engineering and had applied for the post of Lab Assistant/Lab Demonstrator(Electrical). He participated in the examination conducted to the post along with similarly placed candidates. Successful candidates including the applicant were issued appointment orders dated 5.8.2009 (Annexure A-5). The applicant states that similar orders were issued to successful candidates who were selected from among candidates working as Lab Assistant/Lab Demonstrator (Basic Science) and Lab Assistant/Lab Demonstrator (Mechanical). Copies of the same are at Annexures A-6 and Annexure A-7.

4. The next promotion in the cadre is to the post of Scientific Assistant, for which, appointments are made as per Navy Group 'C' & 'D' (Scientific Staff) Posts Recruitment Rules, 2000, copy of the relevant pages being available at Annexure A-8. As per the same, the post of Scientific Assistant is to be filled

up 75% by promotion and 25% by direct recruitment, the eligibility for Lab Demonstrators being 3 year regular service in the grade. The separate cadres of Lab Demonstrators and Lab Assistants seen in Annexure A-8 Recruitment Rules now stands merged, despite the fact that the discipline and expertise required in the three sub categories being distinct and different, even the reservation roster for the categories being maintained based on the independent cadre strength of three disciplines.

5. After the applicant's appointment, it is stated that no seniority list of the independent Lab Demonstrator/Lab Assistant was ever published. However, on 21.11.2012, the second respondent issued a communication containing a list of Lab Demonstrators (Annexure A-10). From this document it was seen that all those who were appointed in the Lab Demonstrators (Mechanical) Wing when the applicant joined as Lab Demonstrators (Electrical) were seen included; however, only two from the post of Lab Demonstrators (Electrical) Wing was shown and none from the discipline dealing with Basic Science. On their representations, the applicant and all others included in Annexures A5, A6 & A7 were invited to appear for the departmental examination. The applicant and others participated in this selection process and the results of the qualifying examination (Oral) to the post of Scientific Assistant was published by the third respondent on 31.1.2013 (Annexure A-11). In Annexure A-11 the applicant

stands at serial no.15 and he is shown to have qualified. Following this, the list of candidates approved for promotion was published from the office of the 2nd respondent dated 28.2.2013 (Annexure A-12). As per the same, all the persons from serial no.1-21 were persons promoted from Mechanical stream except Mr.M.R.Kishor who belongs to SC community and he is included due to reservation. Aggrieved by this, the applicant along with 7 others approached this Tribunal by filing O.A No.206/2013 *inter alia* challenging Annexure A-12 and also praying for a direction to the respondents to identify the vacancies in the cadre for Scientific Assistant for each of the three disciplines as is done for direct recruitment. During the pendency of that Original Application, the respondents published a draft seniority list on 23.4.2013 (Annexure A-13).

6. The applicant was pleased to see that in that seniority list the names of persons selected and appointed on the same date i.e, on 3.8.2009 as Lab Demonstrators/Lab Assistants were arranged on 1:1:1 basis and the applicant stood at serial no.20. Noting these developments and as no other seniority list other than Annexure A-13 was on the records of this Tribunal, Original Application No.206/2013 was disposed of by a common order on 7.4.2014 (Annexure A-14). The Tribunal took note of Annexure A-13 seniority list and took into account the submission of the official respondents that fresh orders of promotion “will be issued in terms of the revised seniority list”. The Original

Application was disposed of with a direction to the official respondents that a review DPC would be held at the earliest and promotion “in terms of the revised seniority list” are issued as expeditiously as possible.

7. Towards the final stages of the Original Application, the official respondents abruptly published another draft seniority list of Lab Demonstrators as on 31.12.2013, communicated by the third respondent on 17.3.2014 (Annexure A-15). The applicant adds that Annexure A-15 was not placed before this Tribunal nor was it relied upon. The applicant and other similarly placed persons were dismayed by the contents of Annexure A-15 list as it was seen that persons who belong to the Mechanical Wing were placed above all those belonging to the Electrical and Basic Science except for serial no.10 and 11. Respondents appeared to have jettisoned the commitment they made before this Tribunal in O.A 206/2013.

8. The applicant addressed a representation seeking (Annexure A-16) a review, but the same was rejected and Annexure A-15 draft seniority list was adopted. The representations were dealt with as per communications at Annexure A-III to Annexure A-1 emphatically stating that the revised list was drawn up on the basis of merit displayed at recruitment examination and interview. However, no explanation was offered as to how merit list of three

different examinations, for three different subjects, for three different interviews conducted in the presence of three different subject experts, could be combined together and common merit list adopted.

9. There was no response to further representation submitted on 13.9.2014 (Annexure A-17) and the Annexure A-2 seniority list was published and communicated to the applicant's office. A staff meeting was held by the Deputy Registrar (ACADS) which did not bear any fruit. The applicant was further distressed to receive Annexure A-3 order dated 24.4.2015 in which the applicant found himself placed against those who were promoted in the panel year 2014-15.

10. As grounds, the applicant protests that the respondents were entirely in the wrong in merging candidates who had come through different and distinct competitive examinations and hold posts in three separate streams into one composite list. Persons who all joined service on the same date i.e, 3.8.2013 form part of the same list. However, the people coming from the Mechanical stream were all placed above those from the Electrical and Basic Science streams without reason. The respondents have also unfairly cast aside the ratio of 1:1:1 which had been done while drawing up Annexure A-13 list, which was presented before the Tribunal. After obtaining orders for early implementation

of promotion on the basis of the list before the Tribunal which was Annexure A-13, the respondents for their own reasons adopted a further list (Annexure A-15) which ignored the ratio principle and gave unfair paramounting to personnel of Mechanical Stream.

11. The official respondents have filed a reply statement which argues that they were acting in accordance with the directions of this Tribunal in O.A 206/2013 to identify vacancies in the cadre of Scientific Assistant for each of the disciplines, Mechanical, Electrical and Basic Science. Direction of this Tribunal was to ensure that a review DPC is held at the earliest and fresh orders of promotion in terms of the revised seniority list are issued. It is maintained by the official respondents that the draft seniority list at Annexure A-15 has been prepared taking into account the percentage of marks obtained by the candidates of the 3 streams in respect of those recruited to the post on the basis of interview and examination held during 2009 and 2011. The Review DPC was held on 18.9.2014 following the provisions of DoP&T and in compliance with the orders of this Tribunal in the Original Application referred to.

12. It is affirmed that the seniority list has been prepared purely based on the merit list of the recruitment examination and interview taking into account the percentage of marks obtained by the candidates of the 3 streams during their

initial entrance into service, as per the results of the examination and interview during 2009 & 2011. The cadre of Lab Demonstrator is a unified cadre and no stream wise/branch wise seniority is maintained or called for in respect of any Scientific cadre. It is further maintained that as per the provisions contained in SRO 19/2014 the Recruitment Rules for Lab Demonstrators makes no distinction as sought by the applicant. A copy of the said SRO dated 4.3.2014 is at Annexure R-1. It is further maintained that the applicant has misinterpreted Annexure A-9 for his own purpose. A notification only specifies the different streams in the cadre and does not reflect any aspect of stream wise seniority. Annexure A-10 is not a seniority list and no weightage can be assigned to the same.

13. It is again reiterated that the respondents were acting as per the directions of the Tribunal. In view of the absence of any specific provision in the Recruitment Rules, the respondents have relied upon extant norms brought out by DoP&T from time to time that seniority among equivalent personnel should be based on the marks scored by them in competitive evaluation.

14. The party respondents 5,6,7,10 and 11 have filed their reply statement wherein they, all belonging to the Mechanical stream, justify their higher position in the revised seniority list and consequent eligibility for promotion. It

is maintained by them that, though the examination was held separately, there was a common interview by a common selection committee which conducted the evaluation. The cadre of the Scientific Assistant being a single cadre and the fact that vacancies were ear-marked separately for direct recruitment, does not extinguish its nature as a single cadre. Besides different trades in the cadre of Lab Demonstrators to Scientific Assistants are considered inter-changeable, for which various examples are given. Even if this Tribunal while considering O.A No.206/2013 was unaware of Annexure A-15, the Tribunal indeed took note of the fact that revision of seniority list was under way.

15. The applicant filed a rejoinder wherein the contentions made in the Original Application have been reiterated.

16. Heard Shri.T.C.G Swamy appearing on behalf of the applicant, Shri.N.Anilkumar, SCGSC, learned counsel for official respondent nos.1-4, M/s.M.R.Rajendran Nair,Sr.Advocate for respondent nos.6,7,10 & 11 and Mr.M.R.Hariraj, learned counsel for the party respondentno.5.

17. Shri.T.C.G Swamy, learned counsel for the applicant argued at length about the injustice involved in drawing up Annexure A-15 seniority list. As detailed in the Original Application, the applicant entered into service on

3.8.2009 along with others who find a place in the revised seniority list at Annexure A-1. From serial no.7 till serial no.18 all who figure therein except for serial no.9 are from the Mechanical trade; remaining candidates who also entered service on the same day find themselves relegated to serial nos.19 to 26. Again as per Annexure A-15 draft seniority list, candidates from serial no.8 to 20 except for 10 and 11 are all from Mechanical Trade. Members of the Electrical and Basic Science trade were relegated to lower positions. Shri.T.C.G Swamy, learned counsel for the applicant submits that it is not known why the logic and reasoning adopted while putting together Annexure A-13 list where ratio 1:1:1 was adopted was jettisoned. He further submits that the direction of this Tribunal while disposing of O.A No.196/2013 and O.A No.206/2013 through its order dated 7.4.2014 the effect that review DPC may be conducted at an early date “in terms of the revised seniority list”, was specific to the list Annexure A-13 as the subsequent list at Annexure A-15 which was issued a few days before the order was pronounced in the Original Applications, was beyond the knowledge of Tribunal. The learned counsel for the official respondents as well as for the party respondents argued that the impugned list has been drawn up strictly on the basis of marks scored and calls for no interference from the Tribunal. All due process was followed and adequate opportunity given to members of the 3 streams to file objections, if any. The DoP&T norms reiterated over time are clearly seen to adopt relative

marks as the basis for adjudging position in the merit list and this principle has been scrupulously followed.

18. We have considered the issue involved in detail. It is seen that the applicant and the party respondents belong to three different streams and have been successful in three different and distinct examinations. They have also joined the service as Lab Assistants/Lab Demonstrators on the same day i.e, 3.8.2009. When it comes to consider their promotion as Scientific Assistant, a common interview is seen arranged. The official respondents taking into account the fact that these candidates had all come through different trade examinations initially appear to have decided upon implementing a ratio of 1:1:1 in the promotion quota. Thus, we assume that, this procedure got the stamp of approval from this Tribunal while considering the two Original Applications.

19. The respondents appear to have suddenly taken a 'U' turn and decided to rely on the marks which the candidates had got at the time of recruitment examination held years ago. The fact that there has been a common interview for these candidates does not take away the arbitrary manner in which the official respondents have acted. Comparing the candidates who have appeared for distinct and different trade examinations on the basis of marks which they

got in those examinations, in our view, would be tantamount to comparing apples with oranges. In any selection examination when the higher grade is merged, uniformity must be an important feature. This does not appear to have been followed in this case. The learned counsel for the respondents point out that Recruitment Rules, the relevant pages of which are available at Annexure A-8, are silent on how to adjudge persons who have come through different examinations and they decided to adopt marks as a decisive factor as is normally prevalent as per DoP&T norms. But marks awarded for different examinations to candidates pursuing different trades cannot be adopted as a common basis as it would be seriously prejudicial to certain trades and would favour some others. This is exactly the position here.

20. As per Annexure A1/6 it is seen that the representation filed by the applicant among others has been disposed of stating that a review DPC is required in order to comply with the directions of this Tribunal in O.A 196/2013 & 206/2013 and it has been decided to follow the “Methodology adopted for preparing the draft seniority list Annexure A-15 as mentioned in para 3 of IHQ letter No.CP(NG)/3017/SL/Sc Cadre dated 27.6.2014.” This Tribunal has been unable to lay its hand on this mysterious communication. The manner in which the official respondents have cited the decision of this Tribunal as a reason for acting the manner they did borders on subterfuge.

21. On the whole we are of the view that the applicant and similarly placed persons have been deprived of their rightful dues by the conduct of the official respondents. We adjudge that the Original Application has merit and accordingly it succeeds. The reliefs sought are allowed in full except for awarding cost. The steps necessary to be taken in compliance with this order should be completed within three months from the date of receipt of a copy of this order. No costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures

Annexure A1 - True copy of Seniority of Lab Demonstrator/Lab Attendant communicated under No. CS/2775/12 dated 13 Aug 2014 by the 3rd respondent.

Annexure A2 - True copy of Draft Seniority List of Lab Demonstrator/Lab Assistant for the year 2014-15 communicated by File No.234 dated 30 Jan 2015 from the office of the 4th respondent.

Annexure A3 - True copy of Order bearing No. CP(NG)/3017/DPC/SA dated 24 Apr 2015 issued from the office of the 2nd respondent.

Annexure A4 - True copy of Notification published in Employment New 7-13 Mar 2009.

Annexure A5 - True copy of order bearing No. CS/2700/12(iii) dated 05 Aug 2009, issued from the office of the 3rd respondent.

Annexure A6 - True copy of appointment order bearing No. CS.2700/12(ii) dated 05 Aug 2009 issued from the office of the 3rd respondent.

Annexure A7 - True copy of appointment order bearing no. CS.2700/12(i) dated 05 Aug 2009 issued from the office of the 3rd respondent.

Annexure A8 - True copy of Navy Group 'C' and 'D' (Scientific Staff) posts Recruitment Rules, 2000.

Annexure A9 - True copy of notification down laded from the website of the respondents.

Annexure A10 - True copy of communication bearing No. CP (NG)/3017/Lab Demo dated 21 November 2012, issued from the office of the 2nd respondent.

Annexure A11 - True copy of letter bearing No. CS/2761/36 dated 31.01.2013, issued from the office of the 3rd respondent.

Annexure A12 - True copy of Promotion Order bearing No. CP(NG)/3017/SSA dated 28.02.2013 issued from the office of the 2nd respondent.

Annexure A13 - True copy of draft seniority list of Lab Demonstrators, bearing No. CP(NG)/3017/DPC/SA dated 23 Apr 2013, originated from the office of the 2nd respondent.

Annexure A14 - True copy of common order (along with OA No. 196/2013) dated 07 Apr 2014 in OA No. 196/2013) dated 07 Apr 2014 in OA No.206/2013 rendered by this Hon'ble Tribunal.

Annexure A15 - True copy of draft seniority list of Lab Demonstrator (as on 31 Dec 2013) communicated by the 3rd respondent under No. CS/2775 dated 17 Mar 2014.

Annexure A16 - True copy of representation dated 04 Apr 2014, addressed to the 2nd respondent.

Annexure A17 - True copy of representation dated 13 Sep 2014 addressed to the 2nd respondent.

Annexure A18 - True copy of representation dated 06.02.2015, addressed to the 2nd respondent.

Annexure A19 - True copy of Staff Minute Sheet bearing File No. 503/5/1 dated 20 Apr 2015, issued by the Deputy Registrar (Acads)in the office of the 4th respondent.

Annexure A20 - A true copy of OA No. 206/2013 dated 10 Mar 2013 filed by the applicant and Ors2 before this Hon'ble Tribunal.

Annexure R1 - Copy of SRO 19/2014 dated 04 mar 2014.

Annexure R5(A) - True copy of the marks obtained by various candidates which are obtained under Right to Information Act.

Annexure R5(B) - A True copy of the letter No. DL/0812/1476/1 dated 16.04.2013 along with its enclosures.

Annexure R5(C) - The true copy of request dated 23.03.2013 in response of which Annexure R4(B) was issued.