

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

OP (CAT). No. 185 of 2015 ()

AGAINST THE ORDER IN O.A. NO. 247/2014 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED 21.08.2015.

PETITIONERS/RESPONDENTS 1 TO 4:

1. UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF EARTH SCIENCES,
PRITHVI BHAWAN, LODHI ROAD,
NEW DELHI - 110 003.
2. THE UNDER SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF EARTH SCIENCES,
PRITHVI BHAWAN, LODHI ROAD,
NEW DELHI - 110 003.
3. THE DIRECTOR (ESTT.),
MINISTRY OF EARTH SCIENCES,
PRITHVI BHAWAN, LODHI ROAD,
NEW DELHI - 110 003.
4. THE DIRECTOR,
CENTRE FOR MARINE LIVING RESOURCES AND ECOLOGY (CMLRE),
C WING, 6TH FLOOR, KENDRIYA BHAWAN,
KAKKANAD, KOCHI - 682 037.

BY ADV. SRI. N. NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA

RESPONDENT/APPLICANT & 5TH RESPONDENT:

1. SMT. C. R. ASHA DEVI,
W/O. MUKUNDEN MENON,
RESIDING AT PLANCHERY MADHOM,
KANNANKULANGARA, TRIPUNITHURA,
ERNAKULAM - 682 301.

P.T.O.

2. SHRI KARRI RAMU, SCIENTIST 'D',
INTEGRATED COASTAL AND MARINE AREA MANAGEMENT (ICMAM),
PROJECT DIRECTORATE, 2ND FLOOR, NIOT CAMPUS,
VELACHERRY - TAMBARAM MAIN ROAD,
PALLIKKARANAI, CHENNAI - 600 100.

R1 BY ADV. SMT.P.V.RADHAMANI

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 19-11-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

APPENDIX

PETITIONERS' EXHIBITS:

- EXHIBIT P1: TRUE COPY OF THE O.A.NO.247/2015 DATED 30.03.2014 FILED BY THE RESPONDENT.
- EXHIBIT P2: TRUE COPY OF THE JUDGMENT DATED 05.08.2014 IN O.P.(CAT) NO.116 OF 2014.
- EXHIBIT P3: TRUE COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS.
- EXHIBIT P4: TRUE COPY OF THE REJOINDER FILED BY THE 1ST RESPONDENT IN O.A.
- EXHIBIT P5: TRUE COPY OF THE AFFIDAVIT FILED ON BEHALF OF THE PETITIONERS.
- EXHIBIT P6: TRUE COPY OF THE ORDER DATED 21.08.2015 IN O.A.NO.247 OF 2014 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

RESPONDENTS' EXHIBITS:

- EXHIBIT R1(A): TRUE COPY OF THE INTERIM ORDER OF THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN O.A.NO.180/00247/2014 DATED 04.04.2014.
- EXHIBIT R1(B): TRUE COPY OF THE INTERIM ORDER OF THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN O.A.NO.180/00247/2014 DATED 06.08.2014.
- EXHIBIT R1(C): TRUE COPY OF THE INTERIM ORDER OF THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN M.A.NO.180/871/14 IN O.A.NO.247/2014 DATED 21.08.2014.
- EXHIBIT R1(D): TRUE COPY OF THE INTERIM ORDER OF THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN M.A.NO.180/871/14 IN O.A.NO.247/2014 DATED 27.08.2014.
- EXHIBIT R1(E): TRUE COPY OF THE INTERIM ORDER OF THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN M.A.NO.180/235/15 IN O.A.NO.247/2014 DATED 12.03.2015.
- EXHIBIT R1(F): TRUE COPY OF THE INTERIM ORDER OF THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN M.A.NO.180/406/15 IN O.A.NO.247/2014 DATED 19.05.2015.

//TRUE COPY//

P.S. TO JUDGE

St/-

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(CAT) No.185 of 2015

Dated this the 19th day of November, 2015

JUDGMENT

Surendra Mohan, J.

Respondents 1 to 4 in O.A.No.247 of 2014 of the Central Administrative Tribunal (for short, CAT), Ernakulam Bench are the petitioners before us, challenging the order dated 21.08.2015 passed by the Tribunal, allowing the Original Application.

2. The 1st Respondent was an applicant for selection and appointment to the post of Scientist 'D' under the Respondents. The notification inviting applications has been produced as Annexure-A3 forming part of Ext.P1. The 1st Respondent had applied for the post, in response to the said notification. Thereafter, the Selection Committee had conducted an interview on 28.08.2012. After the interview, one Rasheed Kunju Mohammed and the 2nd Respondent were selected. The 1st Respondent had challenged the said selection as being arbitrary and vitiated, by filing O.A.No.247 of 2014 before the CAT. The Tribunal considered the matter in

the light of the stand taken by the petitioners herein and found that there was manipulation in the Minutes of the Selection Committee, as a result of which, the rightful claim of the 1st Respondent for appointment was denied and that the said selection was therefore liable to be interfered with. Accordingly, the Tribunal has directed that the 1st Respondent to be appointed with effect from a date immediately prior to the date on which the 2nd Respondent was appointed. The 1st Respondent was also held to be entitled to all service benefits on such appointment, except salary for the period, since she has not worked.

3. According to the learned Assistant Solicitor General of India, Sri. N. Nagaresh, the order of the CAT requires to be interfered with in exercise of our jurisdiction under Article 227 of the Constitution, for the reason that, the finding regarding manipulation by the Selection Committee is without any basis whatsoever. Though the learned Assistant Solicitor General admits that certain portions of the Minutes of the Selection Committee meeting have been scored off, the same was, according to the counsel, necessitated by reason of the fact that portions thereof are printed leaving blank, only the space

for entering the names of the selected candidates. The Selection Committee wanted the 1st Respondent to be considered for appointment to the Scientist 'C' post. In order to facilitate a noting to the said effect, it is contended that, certain portions of the print had to be scored off. The above being the actual position, according to the learned counsel, the CAT erred in directing the 1st Respondent to be appointed.

4. As per the order dated 09.11.2015, another Division Bench of this Court after hearing the learned Assistant Solicitor General, had directed that in view of the serious nature of the insinuation made, it was necessary for the original selection file to be produced before this Court. Accordingly, the original selection file has been made available for our perusal. We have perused the original file.

5. The contentions of the learned Assistant Solicitor General are opposed by the learned counsel for the 1st Respondent. According to the learned counsel, the 1st Respondent had applied only for appointment to the Scientist 'D' post. As per the notification, the two posts were at Kochi and Chennai respectively. However, contrary to the terms of the notification, after his selection the 2nd Respondent has

been posted at Chennai. The learned Assistant Solicitor General in response to the above contention submits that, there is no impediment in transferring a post from Kochi to Chennai, as done in the present case. For such transfer, prior permission of the Ministry is also not necessary. In view of the above, according to the learned Assistant Solicitor General, nothing turns on the said fact.

6. The counsel for the 1st Respondent further points out that, the alterations seen in the Minutes were made deliberately and long after the meeting of the Selection Committee, which was admittedly on 28.08.2012. Attempts to manipulate the selection and to select the 2nd Respondent had commenced even at the time of screening of the candidates. According to the learned counsel for the petitioners, Annexures A-18 and A19 show the candidates who were screened on 11.07.2012. The said documents reveal that the petitioner had been included in Annexure-A19 also, which was the screening done for the post of Scientist 'C' for which the 1st Respondent had not even submitted an application. The above referred documents are relied upon to point out that, a decision had been taken by the authorities to consider the 1st

Respondent for the post of Scientist 'C' even without her application. The learned counsel also places reliance on Annexure-A17, which is a copy of the Minutes of the Selection Committee meeting held on 28.08.2012, which forms part of Annexure-A15 in Ext.P1. Annexure-A17 was produced, marked as Ext.R1(d) by the Central Government Counsel who had appeared for the petitioners herein in O.P.(CAT) No.116 of 2014 filed by the 1st Respondent. In Annexure-A17, the words "and CMLRE, Kochi" appearing in the third paragraph of the Minutes have not been scored off. The above circumstance is relied upon to contend that the scoring off was done by the Selection Committee after the filing of the counter affidavit in O.P.(CAT) No.116 of 2014. According to the learned counsel for the 1st Respondent, the conclusions drawn and findings entered by the CAT in the impugned order are justified in the circumstances and do not call for any interference at the hands of this Court.

7. Heard. The 1st Respondent was an applicant for selection and appointment to the post of Scientist 'D'. It is admitted that she had been considered for selection by the Selection Committee meeting held on 28.08.2012. The case of

the petitioners herein is that one Rasheed Kunju Mohammed and the 2nd Respondent were the candidates found to be suitable by the Selection Committee. However, the Selection Committee felt that the 1st Respondent should be considered for appointment to the post of Scientist 'C' position also. It was for the said reason, in the Minutes of the meeting, corrections were made in the manner seen in the original. However, we are not prepared to accept the said contention for more reasons than one.

8. As rightly pointed out by the learned counsel for the 1st Respondent, the said Respondent had to approach this Court on an earlier occasion by filing O.P.(CAT) No.116 of 2014, challenging an order of the CAT finding that relief No.2 in her Original Application was barred by limitation. The said Original Petition was disposed of by this Court directing that the said relief also to be considered in the said Original Petition. A counter affidavit had been filed in the said case, on behalf of Respondents 1 to 4 who are the petitioners herein, on 23.07.2014. Along with the said counter affidavit, a copy of the Minutes of the Selection Committee held on 28.08.2012 was produced and marked as Annexure-R1(d). We have

perused the said document. The same is a copy of Annexure-A-15. In the said document, the words "and CMLRE, Kochi" have not been scored off. We also notice that the said document was produced by none other than the petitioners herein along with their counter affidavit, and was a document on which they were relying upon, in the earlier O.P. Since Annexure-R1(d) does not contain the said correction, it is clear that the same was done after the said counter affidavit was filed.

9. Now coming to the portion where the numbers 1 and 2 have been printed providing a space for indication of the names of the selected candidates. A correction has been made by scoring off the printed No.2 and entering the name of the 2nd Respondent along side the name of Rasheed Kunju Mohammed on the same line after entering the "No.2", with pen. It has been written against the printed "No.2" beneath that, the 1st Respondent should be called for Scientist 'C' post. The explanation by the learned Assistant Solicitor General is that, the corrections have been made to fit into the space provided in the printed Minutes, the entry to the effect that the 1st Respondent should be called for Scientist 'C' post. Though

the said explanation could be considered as probable, one fails to understand why the Selection Committee could not have made such an entry regarding the 1st Respondent at the end of the printed portion of the Minutes before they signed the same. That would have been the proper manner in which, a Selection Committee should have conducted themselves in the normal course of business, rather than scoring off the printed portions. The other possibility that is canvassed by the learned counsel for the 1st Respondent cannot be ruled out, viz. that after selecting Rasheed Kunju Mohammed as Sl.No.1 and the 1st Respondent as the second candidate, the 2nd Respondent's name was inserted subsequently after scoring off the printed No."2" and entering the words, "to be called for Sci. 'C' position". When the said possibility looms large, the explanation offered by the learned Assistant Solicitor General cannot be accepted. The said explanation is unacceptable especially in view of Annexure A-17 which shows that the Minutes have been manipulated by the Selection Committee after the counter affidavit had been filed in O.P.(CAT) No.116 of 2014. We also take note of the contention of the learned counsel for the 1st Respondent that she had been screened for

the post of Scientist 'C' also, as early as on 11.07.2012 as evident from Annexures-A18 and A19. When all the above circumstances are taken together, we do not find any infirmity in the view adopted by the CAT in Ext.P6 order.

10. We notice that, the Tribunal has taken care to provide that the 1st Respondent would not be entitled to get pay for the period since she had not worked, while at the same time, restoring to her all other service benefits due on the basis of the appointment that had been denied to her for more than two years.

11. For the above reasons, we find no grounds to interfere with Ext.P6 order of the CAT or to grant any of the reliefs sought for. The Original Petition is accordingly dismissed.

12. The learned Assistant Solicitor General, as a last submission, sought for an extension of the time limit stipulated by the CAT in Ext.P6. The request is however opposed by the learned counsel for the 1st Respondent. Having considered the contentions of the respective counsel, we extend the time limit stipulated in Ext.P6 by the CAT, by a period of two weeks from the date of receipt of a copy of this judgment. The 1st

Respondent shall also be at liberty to produce a copy of this judgment before the authorities for prompt compliance.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
19.11.2015