

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

W.P.(C).No.21146 of 2008 (P)

PETITIONER(S):-

P.ANILKUMAR, 48 YEARS, S/O.PUSHPANGADAN,
CHAKKARAPARAMBU, THAMMANAM, COCHIN.

BY ADVS.SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.JAGAN GEORGE
SRI.K.A.NOUSHAD
SRI.P.G.PRAMOD.

RESPONDENT(S):-

1. KERALA SHIPPING AND INLAND NAVIGATION CORPORATION LTD.,
38/924-A, UDAYANAGAR ROAD,
GANDHI NAGAR, KOCHI-20,
REP. BY ITS MANAGING DIRECTOR.
2. R.RAVINDRANATHAN, ACCOUNTANT (EDP),
KERALA SHIPPING AND INLAND, NAVIGATION CORPORATION LTD.,
COCHIN-20.
3. N.BALACHANDRAN PILLAI, SUPERINTENDENT,
KERALA SHIPPING AND INLAND NAVIGATION CORPORATION LTD.,
COCHIN-20.
4. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

R1 BY STANDING COUNSEL SRI.SANTHOSH MATHEW
R1 BY STANDING COUNSEL SRI.V.J.MATHEW
R4 BY GOVERNMENT PLEADER SRI.S.JAMAL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF ORDER NO.G.O.Rt.8/.2000/CSIN
DATED 30.05.2000 ISSUED BY THE DEPARTMENT OF COASTAL
SHIPPING AND INLAND NAVIGATION.
- EXT.P2 TRUE COPY OF GOVERNMENT ORDER NO.G.O.(Rt.)
5/2001/CSIND DATED 23.2.2001.
- EXT.P3 TRUE COPY OF THE ORDER DATED 26.08.2000 ISSUED BY
THE 1ST RESPONDENT.
- EXT.P4 TRUE COPY OF THE ORDER DATED 19.1.2001 OF THE
1ST RESPONDENT.
- EXT.P5 TRUE COPY OF THE JUDGMENT DATED 6.8.2007 IN
O.P.NO.3556/2001.
- EXT.P6 TRUE COPY OF THE REPORT DATED NIL, SUBMITTED BY
THE CORPORATION BEFORE THE GOVERNMENT.
- EXT.P7 TRUE COPY OF THE ORDER DATED 27.2.2008 OF THE
4TH RESPONDENT.

RESPONDENT'S EXHIBITS:-

- EXT.R1(A) TRUE COPY OF THE OFFICE MEMO NO.AAO-3/91
DATED 25.04.1991 ISSUED BY THE 1ST RESPONDENT.
- EXT.R1(B) TRUE COPY OF THE BOARD RESOLUTION DATED 02/05/2000
OF THE 1ST RESPONDENT.
- EXT.R1(C) TRUE COPY OF THE LETTER NO.14636/A1/2000/CSIN
DATED 23.11.2000 ISSUED BY THE GOVT.
- EXT.R1(D) TRUE COPY OF THE MINUTES OF THE PROCEEDINGS OF THE
143RD MEETING OF THE BOARD OF DIRECTOR OF THE
1ST RESPONDENT DATED 29.12.2000.

vkul/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.21146 of 2008-P

Dated this the 09th day of September, 2015

JUDGMENT

The petitioner is aggrieved with the non-consideration of the petitioner for promotion, while the petitioner's juniors, respondents 2 and 3, were so considered.

2. The admitted facts are that, the petitioner, the 2nd respondent and the 3rd respondent joined the 1st respondent as Accounts Clerk on 19.06.1989, 24.06.1989 and 24.07.1989 respectively. The petitioner was promoted as Internal Audit Assistant on 26.06.1995 with effect from 01.07.1995. The respondents 2 and 3 were promoted as Senior Assistant [EDP] and Senior Assistant respectively, on 01.08.1997, almost two years after the petitioner. The controversy arose when posts of Accountant [EDP] and Superintendent [P&A] were sanctioned by the Government. Exhibits P1 and P2 were the qualifications prescribed for the respective posts. For the promotion to the post of Accountant [EDP], experience in Computer was prescribed as

an essential qualification and for the Superintendent [P&A]; experience of seven years in the Personnel and Administrative section was prescribed.

3. The petitioner alleges that, the said prescription originated from the Personnel and Administrative Department manned by respondents 2 and 3, so as to exclude the petitioner. The petitioner filed a writ petition before this Court, numbered as O.P.No.3556 of 2001, which was disposed of by judgment dated 06.08.2007 [Exhibit P5]. This Court found, on an assessment of the entire facts and circumstances, that the petitioner's contention cannot be brushed aside *prima facie* and there is some justification in the argument that the qualifications were prescribed so as to exclude the petitioner from consideration. Government was directed to consider the issue.

4. The 1st respondent by Exhibit P6 recommended that, promotion with effect from 30.05.2000 could be granted to the petitioner also. However, the Government by Exhibit P7 refused to permit the same, since it was found that there were no records available in the 1st respondent-Corporation to examine as to whether any manipulation was carried on in prescribing the

qualification. In fact, the absence of any records would indicate that the apprehension expressed by this Court in Exhibit P5 is fully justified. When sanction is sought for, for a post and eligibility and qualifications are prescribed, definitely there would be consultation within the organisation and a request for approval of such specification made at least internally within the organisation. Without prescribing the essential qualifications and experience for a post, no request could be made for creation of that post.

5. A reading of Exhibit P6 recommendation would also indicate that the Board of Directors of the 1st respondent had sought creation of three posts - (1) Section Officer [Internal Audit Assessment] (2) Section Officer [EDP] and [3] Upgradation of the post of Senior Assistant [P&A]. The contention taken up in Exhibit P6 is that the petitioner could not be promoted, since the creation of the post of Section Officer [Internal Assessment] was not sanctioned. Obviously, the three posts were sought for to accommodate the petitioner, respondent No.2 and respondent No.3 on promotion and definitely the qualifications would also have been prescribed so as to enable the experience of the respective employees in the respective fields to be considered for

promotion. Only by reason of the unfortunate circumstance of the creation of a post of Section Officer [Internal Audit Assessment] having not been sanctioned, the petitioner was declined promotion.

6. It is to be noticed that only due to a fortuitous circumstance the petitioner and respondents 2 and 3 were assigned to different departments, being Internal Audit Assessment, EDP and P&A. When the third post was not sanctioned, definitely the consideration should have been from the three persons, on an assessment of their comparative merit as also the seniority. The petitioner admittedly was senior and was promoted first to the higher post from the post in which he joined.

7. The 1st respondent has filed a counter affidavit, in which it has been specifically stated that the petitioner and the respondents 2 and 3 were selected for training in Computer operation as early as in 1991 and the petitioner had refused to attend the said training. Hence, the petitioner did not have any experience in Computer and the 2nd respondent alone, who availed of the training, could be posted in Accounts, to handle the

same with the facility of Computers. In such circumstances, at this stage the petitioner cannot claim any edge over the 2nd respondent by reason of seniority alone, since he did not avail of the training in Computer operation and also did not have any experience in computer applications.

8. With respect to the 3rd respondent, it is submitted that he is now terminated from service. However, the fact remains that he was promoted to the post of Superintendent [P&A] as per Exhibit P2.

9. In the light of the aforesaid factual position, the petitioner shall be notionally deemed to have been promoted from the date on which the 3rd respondent was promoted and his pay and allowances shall also be fixed accordingly. However no arrears shall be payable to the petitioner for the period he has not worked in the promotion post. The seniority also has to be fixed in terms of the deemed promotion granted to the petitioner. The orders in accordance with what is stated above shall be issued within three months from the date of receipt of a certified copy of this judgment and his pay and allowances fixed and arrears, if any paid, on such fixation after the date of actual promotion.

The writ petition is disposed of as above. Parties shall bear their respective costs.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]