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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00239/2019

Friday, this the 13th day of November 2020

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

1. M.M.Varghese,
S/o.late Shri.M.V.Mathai,
Aged 59 years, Naval Store Officer,
Material Organization, Naval Base, Kochi – 682 004.
Residing permanently at Mavunkal House, CMC – 207B,
Cherthala North, Cherthala P.O.
2. B.L.Jatav,
S/o.late Shri.Anturam,
Aged 57 years, Naval Store Officer,
Material Organization, Naval Base, Kochi – 682 004.
Residing permanently at Flat No.C-404, Plot No.4,
Sector 9, Dwaraka, New Delhi – 110 075. ...Applicants

(By Advocate Mr.M.R.Hariraj)

v e r s u s

1. Union of India
represented by the Secretary to the Government of India,
Ministry of Defense, New Delhi – 1.
2. Principal Director of Civilian Personnel,
Directorate of Civilian Personnel, Integrated Head Quarters,
Ministry of Defense (Navy), Talksatora,
Stadium Annexure Building, New Delhi – 1.
3. Flag Officer Commanding in Chief,
Head Quarters, Southern Naval Command,
Kochi – 682 004.
4. Command Staff Officer (Personnel & Administration),
Southern Naval Command, Kochi – 682 004. ...Respondents

(By Advocate Mr.C.Rajendran)

This application having been heard on 4th November 2020, the Tribunal on 13th November 2020 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The two applicants are aggrieved by the inaction on part of the respondents to consider them for promotion as Senior Naval Stores Officer (SNSO). The promotion to the SNSO in the pay scale of Rs.15600-39100/- with Grade Pay of Rs.7600/- (level 12 of current Pay Matrix) is from the level of Naval Store Officer (NSO). As per the then existing Recruitment Rules, a Naval Store Officer with five years service in the pay scale of Rs.15600-39100/- with Grade Pay of Rs.6600/- in PB-3 rendered after appointment thereto on a regular basis, is eligible for promotion. At the time of filing of this O.A the 1st applicant was still in service but he has since retired with effect from 31.05.2020. Just after his retirement the Indian Naval Material Management Service (Group A) Rules, 2020 were promulgated on 29.06.2020 (Annexure A-8). It is submitted that subsequent to the promulgation of these Rules, promotion orders were issued, promoting personnel including the 2nd applicant, with effect from 29.06.2020 as per Annexure A-9. The applicants argue that the vacancies which have now been filled up by Annexure A-9 notification are vacancies which existed prior to promulgation of the Annexure A-8 Rules. It is submitted that the said vacancies ought to have been filled earlier on the date of occurrence of the same based on the Rules that were in force at that point of time. The applicants submit that since their cases were not considered for promotion from the date of occurrence of vacancy, this is arbitrary, unjust, discriminatory, illegal and violative of Articles 14 & 16 of the Constitution of India.

2. The applicants contend that as many as 12 vacancies of SNSO were existing at the time of the filing of the O.A. In the All India Seniority List of NSO at that time the applicants were figuring at Sl.No.6 and 11 respectively. However, the respondents did not conduct the Departmental Promotion Committee (DPC) Meeting from 2016-17 onwards. Although the applicants had been granted financial upgradation under the Assured Career Progression Schemes (ACP/MACP), the refusal to hold the DPC and to permit the applicants to occupy higher posts and discharge higher duties was against the interest of service. The applicants had made representations to the authorities which was responded to by Annexure A-4, in which the respondents have accepted that the matter was delayed due to Disciplinary and Vigilance (D&V) Clearance not being given to one officer, namely, Shri.R.Issac. The DPC for 2016-17 and 2017-18 was initiated as early as on 24.10.2016 and after protracted correspondence between different wings of the Ministry of Defence (Navy), the Integrated Headquarters (IHQ)/ Directorate of Civilian Personnel Services (DCPS) and the Flag Officer Commanding-in-Chief, Southern Naval Command, Kochi, the Ministry of Defence/D(Vigilance) accorded D&V clearance in respect of eligible officers in the seniority list of NSO, except the senior most Naval Store Officer Shri.R.Issac, vide MoD I.Ds dated 09.03.2018 and 17.09.2018. This was followed by IHQ/DCPS submitting the proposal to conduct a DPC for the grade of SNSO for the year 2016-17, 2017-18 and 2018-19 on 02.11.2018. However, this was not approved by MoD/D(N-II) for want of D&V clearance for Shri R.Isaac and was returned on 30.11.2018. Finally, the vigilance clearance for Shri R.Isaac was given by the MoD (N) and

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IHQ/DCPS in Jan-Feb 2019, but further action was not taken to convene the DPC, as considerable time had elapsed in the process necessitating a revalidation of the Disciplinary and Vigilance Clearance earlier given to the officers. This back and forth correspondence between different wings of Ministry of Defence is apparent not just in the Annexure A-4 response to the representations made by the applicants but also in Annexures provided by the Respondents in the reply statement at Annexure R-4 to Annexure R-12 and at Annexure R-13 and Annexure R-14. It has been admitted in the reply statement that there was one vacancy at the SNSO level in the DPC of 2016-17, 10 vacancies in the year 2017-18 due to the formation of the Indian Naval Material Management Service as an organized service on 07.08.2017 and one vacancy in the year 2018-19. The Respondents squarely admit that the DPCs of 2016-17 to 2018-19 were kept pending for want of vigilance clearance of all eligible candidates falling under the zone of consideration.

3. Further, the respondents in their reply statement at Para 3 make the following averment :“.....*The Hon'ble Tribunal may note that the D&V clearance in respect of all eligible candidates or a clear order towards denial of D&V clearance is mandatory before processing the case for DPC.....*” Thus, it is clear that the main argument of the respondents rests on the lack of a D&V certificate in respect of Shri.R.Issac who was at Sl.No.1 in the list of eligible NSOs for promotion, which in their view was necessary for processing the case for holding a DPC. At the same time, the respondents submit that the applicants have been drawing the pay of the promotional grade due to the implementation of the MACP Scheme from

19.06.2013 and 20.02.2014 respectively. Hence the delay in promotion has not resulted in financial loss to the individuals. Further, they also have mentioned in Paragraph 11 of the Reply that the 1st applicant had been implicated in a disciplinary proceeding on an allegation of misuse of official powers resulting in pecuniary loss to the Government and as such D&V clearance in respect of the 1st applicant is subject to the outcome of the said disciplinary proceeding. The respondents submit that the promotion can be granted on completion of DPC subject to selection of the candidate and availability of vacancy. The process of DPC should undergo the requisite administrative procedures to ensure that the employees who are fit in all respects are granted promotion. The DPC proposal for promotion to the post of SNSO is under process and the same will be submitted to UPSC through MoD immediately on completion of administrative processes including D&V formalities.

4. In their rejoinder, the applicants have pointed out that even if the D&V clearance was not available in respect of one officer, other eligible officers were still entitled to be considered in accordance with the circumstances at the time when the vacancy actually occurred. The vacancies in this respect actually arose during 2016-17 to 2018-19 and there was no reason as to why the applicants who are the juniors of Shri.R.Issac and who had clearance from the Ministry of Defence have not been considered in accordance with Rules. They point out further that the allegation against the 1st applicant were raised for the first time only in May 2019 and cannot have any impact on promotions pending from 2016-17 to

2018-19. In addition, with reference to relevant Government instructions from the DoPT covering such cases, they submit that the 1st applicant was not suspended, issued any charge memo nor has any criminal prosecution pending and, thus, there is no justification for the D&V clearance not to be granted to him, even as on date. In fact, even Shri.R.Issac has no proceedings as contemplated under the same Government orders warranting refusal of a D&V clearance. The delay in promotion has had consequential effects on monetary benefits as well as on working equivalency with service counterparts. The respondents have unnecessarily delayed grant of promotion without any justification or rationale and it is fairly clear that it is mainly the inaction on the part of the 1st respondent, namely, the Ministry of Defence/Navy D(Vig.) which has been the cause for the non-conduct of DPC for such a long time. In support of their contention of inaction in their case, the applicants have produced a copy of vigilance clearance given for the purpose of promotion in respect of a Chief Engineer which has been issued by the same Ministry of Defence, even as a show cause notice was issued on him (Annexure A-5).

5. We have gone through all the documents provided as well as heard Shri.M.R.Hariraj, learned counsel for the applicants and Shri.C.Rajendran, learned counsel for the respondents.

6. Learned counsel for the applicants has drawn attention to a number of cases which are relevant in this regard. In **Union of India & Ors. v. K.V.Jankiraman & Ors. (1991) 4 SCC 109** the Hon'ble Apex Court has

observed that *“the promotion cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee.”*

Further, in **Bank of India v. Suryanarayana 1999 (5) SCC 762** the Hon'ble Apex Court in Paragraph 14 has stated that *“the sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over. As on 1.1.1986 the only proceedings pending against the respondent were the criminal proceedings which ended into acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge sheet on 03.12.1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent.....”* Similarly, in **Union of India & Ors. v. Sangram Keshari Nayak 2007 (6) SCC 704** the Hon'ble Apex Court in Paragraph 8 noted that *“Thus, there was no bar in promoting the respondent during the period 14.01.1999 to 27.08.1999. No material was placed before the DPC to take recourse to the sealed cover procedure. In fact, none existed at the material time. Paragraph 2 of the said circular specifically refers to*

submission of chargesheet as the cut off date when a departmental proceeding can be said to have been initiated.” In this case the Hon'ble Apex Court again referred to the decision in K.V.Janakiraman case (supra) regarding sealed cover procedure. In addition to this, in the case of **State of Kerala & Ors. v. E.K.Bhaskaran Pillai (2007) 6 SCC 524** the issue of grant of retrospective benefit on promotional post was examined by the Apex Court and it was held as follows :

“.....We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal..... Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle “no work no pay” cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

7. Learned counsel for the applicants through the above cited cases seeks to establish that the respondents were not correct in delaying/denying the grant of Disciplinary and Vigilance Certificates for holding of DPC as none of the officers eligible were under suspension nor was any charge sheet issued and nor was there any criminal case pending, which are three conditions as specified in the Government Circulars which guide conduct of the DPC for promotional posts. This is also revealed in the letters produced as Annexure R-10 and Annexure R-11 (at paras 4 and 5) wherein the

DoP&T O.M.No.F.No.22034/4/2012-Estt.(D) dated 02.11.2012 has been referred to, as per which the vigilance clearance for promotion can be denied only in the following three circumstances :

- (i) Government servants under suspension.
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending and
- (iii) Government servants in respect of who prosecution for a criminal charge is pending.

These criteria were not applicable to any of the officers including Shri.R.Issac and as such there was no ground for non approval/delay in the grant of vigilance clearance to any of them. Hence it appears that the DPC was indefinitely delayed for inappropriate reasons resulting in fatal harm to the applicants.

8. Learned counsel for the respondents in response only submitted that the required number of vacancies for the applicants to be considered for promotion were not available in 2015-16 and 2016-17 and that the averments/explanations made in the reply statement should be relied upon.

9. We have perused the documents and are in broad agreement with the arguments made by learned counsel for the applicants. In this case, the DPC should have been convened under the existing rules well in time and not delayed for no clear reason. There does not appear to be any bar to the grant of the Disciplinary and Vigilance Certificates to all the eligible officials under the official instructions governing their issue or on any other basis. Even if the D&V clearance was not given to Shri R. Isaac, it did not

preclude the concerned respondents from convening the DPC and considering other eligible candidates who had the D&V certificates. After carefully considering all the relevant factors, we have no hesitation in concluding that this is a case in which the respondents have very weak legs to stand upon. It appears to us that a callous and insensitive attitude has created this problem, compounded by a poor understanding of rules and procedures. **We, therefore, recommend that the Secretary, Ministry of Defence initiate necessary steps including identifying the concerned officials involved in MOD/D(Vigilance) and in IHQ/DCPS for taking appropriate action for delaying grant of the necessary D&V clearance certificates at the right time.** This has caused undue harm to the applicants, as well as to those who were eligible for promotion. As recorded in Sangram Keshari Nayak (supra), (paras 5 and 6): *“Promotion is not a fundamental right. However, the right to be considered for promotion is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefor..... Terms and conditions of an employee working under the Central Government are governed by the rules framed under the proviso appended to Art.309 of the Constitution of India or under a statute. The right to be promoted to a next higher post can, thus, be curtailed only by reason of valid rules. Such a rule again, however, cannot be construed in a manner so as to curtail the right of promotion more than what was contemplated by law.”*

10. We find that the right of the applicants for consideration for promotion in due time has been taken away for no valid reason and therefore is to be restored. The first applicant has retired on 31.05.2020 just before new Rules were issued by which those senior to him as well as others like the 2nd applicant who was junior, were promoted in the month of June, 2020. While it could be considered that such situations are not unknown or uncommon in the course of Government service, this Tribunal cannot ignore the injustice that is patently present. In this, we are guided by the decision of the Hon'ble Apex Court in **P.N.Premachandran v. State of Kerala & Ors. 2004 (1) SCC 245** where (in para 7) it was found that due to an administrative lapse the Departmental Promotion Committee did not hold a sitting and that the affected employees could not suffer owing to such an administrative lapses for no fault of their own. Similarly, in **Chamanlal Lakhanpal v. UPSC 1998 (3) SLR 43** the Hon'ble Apex Court found that the claim of promotion from a back date cannot be denied, if the employee has a right to be promoted when vacancies are to be filled.

11. We, therefore, direct that the DPCs for the years 2016-17, 2017-18 and 2018-19 be conducted by the respondents taking into consideration all the eligible employees with the required seniority who were in service at that time on the basis of their Personal Assessment as well as Disciplinary and Vigilance records for the particular periods in question as well as on the basis of the then existing Rules and other procedures guiding the functioning of the DPC. We emphasize that the subsequent retirement of any of the employees, as in the case of 1st applicant, should not stand in the

.12.

way of consideration of their cases by the DPC so constituted. After this exercise is undertaken, if the applicants along with others are found to be fit to be promoted to the post of SNSO, they may accordingly be considered for promotion from the date of occurrence of vacancies under the concerned Recruitment Rules prevailing at that time. They may also be paid any arrears of pay, if eligible for the same, if found fit for the promotion.

12. We, therefore, allow the O.A and do not impose any costs to the parties except to the extent of our direction in Paragraph 9 as to the appropriate action to be taken against those responsible for the delay in issuing the Disciplinary and Vigilance Certificates at the right time. We also direct the concerned respondents to complete the process spelt out in paragraph 11 within a period of six months from the date of receipt of a copy of this order.

(Dated this the 13th day of November 2020)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00239/2019

- 1. Annexure A-1** – A copy of the CP(G)/0122/SL/INMMS dated 5/7/2018 along with relevant seniority list.
- 2. Annexure A-2** – A copy of the letter No.MMV/NSO/18-19/1 dated 29/11/2018 of the applicant.
- 3. Annexure A-3** – A copy of the letter No.CS 2762/24 dated 18/1/2019.
- 4. Annexure A-4** – A copy of the letter No.CP(G)/4004/INMMS/REP/DPC dated 19/2/2019.
- 5. Annexure A-5** – A copy of the show cause notice No.Mod ID No.C-31018/8/2018-D(Vig)(Pt.II) dated 22/4/2019 along with a clearly retyped copy of the same.
- 6. Annexure A-6** – A copy of the letter No.78650/IC/2019/EID(Vol.III) dated 2/4/2019 issued by Engineer-in-Chief's Branch/EID (Discipline & Vigilance).
- 7. Annexure A-7** – A copy of the order No.CP(G)/2604/INMMS/155/US(MP)/D(N-II)/17 dated 7/8/2017.
- 8. Annexure A-8** – A copy of the Indian Naval Material Management Service (Group A) Rules, 2020.
- 9. Annexure A9** – A copy of the order No.CP(G)4004/DSC/JAG(NF)/INMMS dated 31/8/2020.
- 10. Annexure R-1** – A copy of the DCP(G) notes CP(G)/400/SNSO/2016-17-18-19.
- 11. Annexure R-2** – A copy of the DCPS(DV) note CPT(DV)/3113/D&V(i) dated 05 July 2019.
- 12. Annexure R-3** – A copy of the minutes of the DPC held on 08 November 2016.
- 13. Annexure R-4** – A copy of the IHQ/DCPS note CPT(DV)/3113/D&V dated 07 May 2017.
- 14. Annexure R-5** – A copy of the IHQ/DCPS note CPT(DV)/3113/D&V dated 28 August 2017.
- 15. Annexure R-6** – A copy of the IHQ/DCPS note CPT(DV)/3113/D&V dated 18 September 2017.
- 16. Annexure R-7** – A copy of the IHQ/DCPS note CPT(DV)/3113/D&V dated 23 November 2017.

.14.

17. Annexure R-8 – A copy of the IHQ/DCPS note CPT(DV)/3113/D&V dated 29 January 2018.

18. Annexure R-9 – A copy of the IHQ/DCPS note CPT(DV)/3113/D&V dated 19 April 2018.

19. Annexure R-10 – A copy of the IHQ/DCPS note CPT(DV)/3113/D&V dated 23 May 2018.

20. Annexure R-11 – A copy of the IHQ/DCPS note CPT(DV)/3113/D&V dated 08 August 2018.

21. Annexure R-12 – A copy of the IHQ/DCPS note CPT(DV)/3113/D&V dated 14 August 2018.

22. Annexure R-13 – A copy of the IHQ/DCP note CP(G)/4008/SNSO/DPC dated 23 April 2019.

23. Annexure R-14 – A copy of the IHQ/DCPS(DV) note CPT(DV)/3113/D&V dated 24 April 2019.
