CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NOs. 398/07, 430/07, 439/07 & 440/07

Wednesday, this the 13th day of February, 2008.

C O R A M

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

O.A. 398/07

U.K. Sasidharan S/o late Kunhiraman
Assistant Foreman (Air Electrical) (A/L)
Naval Aircraft Yard,Naval Base,
Cochin-682 004
Residing at Panangat Houlse, KRRA-14
Edappally, Cochin-682 024. ... Applicant

(By Advocate Mr.. TCG Swamy)

Vs

1 Union of India represented by
The Secretary to the Government of India
Ministry of Defence, New Delhi.

2 The Chief of the Naval Staff,
Integrated Headquarters
Ministry of Defence (Navy)(DCP)
New Delhi.

3 The Flag Officer Commanding-in-Chief
Headquarters, Southern Naval Command,
Naval Base, Kochi-682 004.

4 The Chief Staff Officer (P&A)
Headquarters, Southern Naval Command,
Naval Base, Kochi-682 004. ..Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC.

O.A. 430/2007

1 P.K. Peethambaran S/o Kumaran
Chargeman Gr.I (Air Radio)
Naval Aircraft Yard (Kochi)
Naval Base, Kochi-682 004
residing at No.C-30/874-B
MES Road, Thlycoodam, Vyttila
Ernakulam.

2 Y. Chandrasekharan S/o Gangadhara Sarma
Chargeman Gr. I (Air Radio)
Naval Aeronautical Quality Assurance Service (Kochi)
Naval Base, Kochi-682 004
residing at 'AMBADI', MERRA 153
Edakkat Lane III, Ponnichera road,
Edappally, Ernakulam. .. Applicants.

(By Advocate M/s.. TCG Swamy)

Vs

1 Union of India represented by
The Secretary to the Government of India,
Ministry of Defence, New Delhi.

2 The Chief of the Naval Staff,
Integrated Headquarters,
Ministry of Defence (Navy)(DCP)
New Delhi.

3 The Flag Officer Commanding-in-Chief
Headquarters, Southern Naval Command,I
Naval Base, Kochi-682 004.

4 The Chief Staff Officer (P&A)
Headquarters, Southern Naval Command,
Naval Base, Kochi-682 004. ..Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC.

O.A. 439/2002

1 P. Appukkuttan S/o P. Vellayan
Chargeman Gr.I (Air Engine)
Naval Aircraft Yard (Kochi)
Naval Base, Kochi-682 004
residing at Panachikkal House,
Thottungathara Road,
Kadavanthara, Kochi-20

2 O.R. Sasi S/o Ramakrishnan
Chargeman Gr.I (Air Engine)
Naval Aircrafts Yard (Kochi)
Naval Base, Kochi-682 004
residing at Oli Parambil House,
Attaniyedathu Road,Vennala PO
Kochi-28

3 A.K. Kumaran S/o Kannan
Chargeman Gr.I (Air Engine)
Naval Aircrafts Yard (Kochi)
Naval Base, Kochi-682 004
residing at Amachottil House,
Paingarappilly Road, Trilpunithura PO
Ernakulam District. Applicants

(By Advocate M/s.. TCG Swamy)

Vs

1 Union of India represented by
The Secretary to the Government of India
Ministry of Defence, New Delhi.

2 The Chief of the Naval Staff,
Integrated Headquarters,
Ministry of Defence (Navy)(DCP)
New Delhi.

3 The Flag Officer Commanding-in-Chief
Headquarters, Southern Naval Command,I
Naval Base, Kochi-682 004.

4 The Chief Staff Officer (P&A)
Headquarters, Southern Naval Command,
Naval Base, Kochi-682 004. ..Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC.

O.A. 440/2007

1 V. Sivadasan S/o V. Pazhani
Chargeman Gr.I (Air Electrical)
Naval Aircraft Yard (Kochi)
Naval Base, Kochi-682 004
residing at type-III/C-9
DawsonVihar, Thycoodam,
Ernakulam.

2 O. C. Alice W/o K.S. John
Chargeman Gr.I (Air Electrical)
Naval Aircraft Yard (Kochi)
Naval Base, Kochi-682 004
residing at Type-III/C-4
Dawson Vihar, Thycoodam
Ernakulam.

3 P.V. MohananNambiar S/o Raghavan Nambiar
Chargeman Gr.I (Air Electrical)
Naval Aircraft Yard (Kochi)
Naval Base, Kochi-682 004
residing at Saranya, Mukkiottil Temple Road
Poonithura PO, Ernakulam.

4 M.K. Shaji S/o Karunakaran
Chargeman Gr.I (Air Electrical)
Naval Aircraft Yard (Kochi)
Naval Base, Kochi-682 004
residing at Thekkeveliyil, Poothotta
Ernakulam District. ...Applicants

(By Advocate M/s.. TCG Swamy)

Vs

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Ministry of Defence, New Delhi.

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Headquarters, Southern Naval Command,
Naval Base, Kochi-682 004. ..Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC.

ORDER

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

The issue involved in all these four OAs are identical. Therefore all these four OAs are disposed of through a common order.

2 The brief facts of the cases are as follows:

O.A.398/07

3 The applicant in this O.A. is presently working as Assistant Foreman, (Air Electrical (AL) in the pay scale of Rs. 6500-10500 under the respondents. He was initially appointed as Mechanic in 1977and received promotions from time to time. Before the year 2001 the Technical Supervisory cadre consisted of three pay scales namely Senior Chargeman in the pay scale of Rs. 5000-8000 Foreman in the pay scale of Rs. 5500-9000 and Senior Foreman in the pay scale of Rs. 7450-11500. During the year 2001 by order dated 26.12.01 issued by the first respondent a Four Tier structure was introduced with the following scales:

(i)	Chargeman II	Rs. 5000-8000
(ii)	Chargeman-I	Rs. 5500-9000
(iii)	Assistant Foreman	Rs. 6500-10500
(iv)	Foreman (Gazetted)	Rs. 7450-11500

4 The applicant was promoted in March, 2005 as Assistant Foreman which is a post in the Four Tier structure. It is the applicant's grievance ~~is that~~ that although he is eligible to be considered to the post of Foreman (Gazetted) in the scale of Rs. 7450-11500, his case has not been considered by the respondents in spite of repeated representations. He has prayed for the

following reliefs through this O.A:

(a) Declare that the non-feasance on the part of the respondents in considering the applicant for promotion as Foreman (Gazetted)Air Electrical (A/L)against the existing vacancy is arbitrary,discriminatory and contrary to law and hence, unconstitutional.

(b) Direct the respondents to consider and promote the applicant as as Foreman (Gazetted) Air Electrical (A/L) and direct the respondents to grant the applicant all consequential benefits with effect from the date of promotion of those who are recommended by the DPC which met on 30 May 2007 to the post of Foreman (Gazetted) (A/R) or A/E) as the case may be;

(c) Award costs of and incidental thereto

(d) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.

O.A. 430/2007

5 The applicants in this O.A. are presently working as Chargeman Grade-I in the pay scale of Rs.5500-9000 in the Naval Aircraft Yard (NAY) under the respondents. The applicants are aggrieved by the denial of consideration for promotion to the post of Assistant Foreman in the pay scale of Rs. 6500-10500. The applicants were initially appointed as Mechanic Grade-C and received promotions from time to time. They were last promoted as Chargeman Grade-I. According to the Four Tier Structure introduced by the respondents in the year 2001, they are now eligible to be considered for promotion as Assistant Foreman in the pay scale of Rs. 6500-10500. It is the applicant's grievance that although the vacancies are available they are not being considered for promotion as Assistant Foreman. They have therefore prayed for the following reliefs in this O.A.:

(a) Declare that the failure on the part of the respondents to fill up the existing vacancies of; Assistant Foreman (AR) in scale Rs. 6500-10500 under the 3rd respondent, Southern Naval Command, is arbitrary,discriminatory and contrary to law and hence, unconstitutional.

b) Direct the respondents to consider the applicants for promotion against the vacancies of Assistant Foreman (AR) in scale Rs. 6500-10500 and to grant the consequential benefits thereof forthwith:

c) Declare that the action of the respondents in convening the DPC for filling up the existing vacancies in the cadre of Foreman (Gazetted) (Air Radio) is illegal arbitrary and unconstitutional;

d) Award costs of and incidental thereto.

e) Pass such other orders or directions as deemed just and fit bythis Hon'ble Tribunal.

O.A. 439/07

6 The applicants in this O.A. are presently working as Chargeman Grade-I in the pay scale of Rs. 5500-9000 in the Naval Aircraft Yard (NAY) under the respondents. The applicants are aggrieved by the denial of consideration of promotion to the post of Assistant Foreman (Air Engine) in the pay scale of RS. 6500-10500. The applicants were initially appointed as Mechanic Grade-C and received promotion from time to time. Their last promotion was in the grade of Chargeman Grade-I in the pay scale of Rs. 5500-9000. They are now eligible for promotion as Assistant Foreman in the Four Tier structure introduced by the respondents in the year 2001. They have sought the following reliefs:

(a) Declare that the three tier grade structure of the Technical Supervisory Staff of the Naval Aircraft Yard is no longer in force and that only the four tier grade structure introduced by Annexure A-1 remains in force:

(b) Declare that the failure on the part of the respondents to fill up the existing vacancies of Assistant Foreman (Air Engine) in the scale Rs. 6500-10500, under the 3rd respondent, Southern Naval Command, is arbitrary, discriminatory and contrary to law and hence unconstitutional.

(c) Direct the respondents to consider the applicants for promotion against the vacancies of Assistant Foreman (Air Engine) in scale Rs. 6500-10500 and to grant the consequential benefits thereof forthwith

(d) Declare that the action of the respondents in convening the DPC for filling up the existing vacancies in the cadre of Foreman (Gazetted) (Air Engine) is illegal arbitrary and unconstitutional.

(e) Award costs of and incidental thereto

(f) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal

O.A. 440/07

7 The applicants in this O.A. are working as Chargeman Grade-I in pay scale of Rs. 5500-9000 in the Naval Aircraft Yard (NAY) under the respondents. They are aggrieved by the denial of consideration for promotion to the post of Assistant Foreman (Air Electrical) in the pay scale of Rs. 6500-10500. The applicants were originally appointed as Mechanic and received promotions from time to time. Their last promotion was in the grade of Chargeman Grade-I in the scale of Rs. 5500-9000. They are now eligible for promotion to the post of Assistant Foreman in the Four Tier structure introduced by the respondents in the year 2001. They have now sought for the following reliefs:

(a) Declare that the three tier grade structure of the Technical Supervisory Staff of the Naval Aircraft Yard is no longer in force and that only the four tier grade structure introduced by Annexure A-1 remains in force:

(b) Declare that the failure on the part of the respondents to fill up the existing vacancies of Assistant Foreman (Air Engine) in the scale Rs. 6500-10500, under the 3rd respondent, Southern Naval Command, is arbitrary, discriminatory and contrary to law and hence unconstitutional.

(c) Direct the respondents to consider the applicants for promotion against the vacancies of Assistant Foreman (Air Engine) in scale Rs. 6500-10500 and to grant the consequential benefits thereof forthwith

(d) Declare that the action of the respondents in convening the DPC for filling up the existing vacancies in the cadre of Foreman (Gazetted) (Air Engine) is illegal arbitrary and unconstitutional.

(e) Award costs of and incidental thereto.

(f) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal

8 Respondents have contested all the O.As. and filed their reply statement. They have contended in their reply that:

(a) The Hon'ble Tribunal in the common order dated 13.4.2006 in O.A. 656/03 and 842/03 have directed that the vacancies arising out of the introduction of Four Tier structure should not be filled up without promulgation of the revised Recruitment Rules and hence the promotion to the post of Foreman as well as Assistant Foreman in the Four Tier Structure has been kept in abeyance

(b) Necessary action is in progress for promulgation of the Recruitment Rules in the Aviation Wing of the Technical Supervisory Cadre.

(c) The applicant in O.A. 398/07 is qualified for the post of Foreman (Gazetted) and he is the seniormost Assistant Foreman to be considered for promotion as Foreman (Air Electrical). The applicants in O.As 439/07, 440/07 and 430/07 are eligible to be considered for promotion as Assistant Foreman in the Four Tier Structure. However, due to the direction of the Hon'ble Tribunal cited above the promotions have been kept in abeyance till the finalisation of the Recruitment Rules.

(d) Considering the anticipated delay in promulgation of the Recruitment Rules, proposal has already been submitted for approval of the competent authority to fill up the existing vacancies in the NAY, Cochin on ad hoc basis.

9 We have heard learned counsel for the applicant Shri TCG Swamy and learned counsel for respondents Mrs. Jisha for Mr. TPM Ibrahim Khan, SCGSC. During the arguments, the learned counsel for the applicant submitted that the respondents are wrongly interpreting the direction given by this Tribunal in O.A. 656/03 and 842/03. It is his contention that the Tribunal has not given any direction to keep the promotions in abeyance. He also stated that even after the issue of the orders of the Tribunal, promotion order was issued on 26.5.2006 in which one Mr. B. Sasidharan was promoted as Foreman in the pay scale of Rs. 7450-11500. Along with Shri B. Sasidharan several others were also promoted. Besides, the order of this Tribunal relates to posts and vacancies in the cadre of Technical Supervisors in the Naval Dockyard/Naval Ship Repair Yard whereas the applicants belong to the Aviation cadre. Further, with the publication of SR-8/2007 containing revised Recruitment Rules for Technical Supervisors in Naval Dockyards/Naval Ship Repair Yards the direction of the Tribunal in O.As. 656/03 and 842/03 stood complied.

10 We have also perused all the documents on record carefully. The rejoinder filed by the applicant has also been considered.

11 The issue for consideration in these OAs is whether the respondents are justified in keeping the promotions as per the four tier structure in the Aviation Wing of the Technical Supervisory cadre in abeyance pending finalisation of the Recruitment Rules by citing the directions given by this Tribunal in O.A. 656/03 and O.A. 842/03. The operative portion of the order passed by this Tribunal in O.A. 656/03 reads

as follows:

> "12 We also draw particular attention to Para 4 of the order of the Ministry of Defence dated 26.12.2001 implementing the recommendations of the 5th Central Pay Commission. In view of the categorical statement in this para that the promotions to the newly formed grades and placement thereof should be done only after fulfillment of the criteria as prescribed in the Recruitment Rules, the respondents should not have gone ahead with the promotions in the manner done by issuing Annexure A-2 following a method of recruitment in the absence of notified recruitment rules which has actually given rise to these grievances of the applicants. We therefore, declare that these promotions which have been effected in accordance with Annexure A-2 order of the respondents dated 10th October, 2002 are dehors the Recruitment Rules and have to be treated as ad hoc or temporary till the finalisation and notification of Recruitment Rules. The respondents shall formulate and notify revised Recruitment Rules in keeping with the spirit of the recommendations of the 5th Central Pay Commission to provide optimum promotional opportunities for the supervisory cadre and notify such Recruitment Rules within a period of four months from the date of receipt of a copy of the order and till such Recruitment Rules are finalised, the promotions made to these grades would be deemed as temporary/adhoc. In the light of the above discussion we are not quashing any of the impugned orders which shall all remain subject to the directions above. There is no order as to costs."

12 In the above direction the Tribunal has referred to the conditions stipulated in the order dated 26.12.2001 by which the Four Tier Structure was introduced and observed that in view of the categorical statement in para 4 of the said order the respondents should not have gone ahead with the promotion in the manner done by issuing Annexure A-2 in the absence of Recruitment Rules. However, the Tribunal had not quashed the promotions and only treated them as ad hoc/temporary. The Tribunal had further directed that the Recruitment Rules should be finalised within a period of four months. The observations of the Ernakulam Bench in O.A. 656/03 and 842/03 have to be read with reference to the conditions

stipulated in para 4 of the order dated 26.12.2001 issued by the respondents. It is also stated tin the said direction of the Tribunal that till such time Recruitment Rules are finalised promotions made to these grades should be treated as temporary/adhoc. The observations/directions of the Tribunal should not therefore have been interpreted to mean that the respondents are restrained from making even ad hoc promotions when there is delay in finalising Recruitment Rules. It is further relevant to note that even before issue of the Recruitment Rules the respondents had issued promotion order in respect of some employees vide their order dated 23.5.06. This order includes the names of employees in the Naval Aircraft Yard also. It is therefore not possible to accept the contention of the respondents that they have interpreted the direction of this Tribunal in O.A. 656/03 and 842/06 as implying that promotions in all trades - temporary, ad hoc or regular - have to be kept in abeyance till the finalisation of the Recruitment Rules. Admittedly there are vacancies in the post of Assistant Foreman as well as Foreman (Gazetted) in Aviation trades as per the Four Tier Structure introduced by the respondents. The respondents have also been promoting employees on the basis of the Four Tier Structure. As per respondents reply statement the matter has been taken up with the competent authority for approval to fill up the existing vacancies on ad hoc basis pending finalisation of the Recruitment Rules in this regard. There is therefore no justification to go back to the three tier structure or to deny consideration of the applicants in these OAs for promotion in the four tier structure on ad hoc basis. The reason given by the respondents that the directions of the Tribunal in O.A. 656/03 and 842/03 constitutes a restraint on ad hoc promotion pending finalisation of Recruitment Rules is not sustainable.

13 For the reasons stated above, all the OAs are disposed of with the direction that the respondents shall consider the applicants in these OAs for promotion to the next grade on ad hoc basis in the four tier structure of the Technical Supervisory cadre, pending finalisation of the Recruitment Rules.

Dated 13.2.2008.

DR.K.S. SUGATHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

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