

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 449 of 2006

Friday, this the 29th day of February, 2008

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR K B S RAJAN, JUDICIAL MEMBER**

Baby Mathew, S/o. Mathew,
Now residing at Kaniyamkandathil House,
Purapuzha P.O., Thodupuzha, Working as
Fitter Auto HS, Material Organisation,
Naval Base, Kochi.

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Applicant.

(By Advocate Mr. Sreeraj for Mr. A.J. Varghese)

v e r s u s

1. Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command,
Kochi.
2. Administrative Officer Grade-II,
Staff Officer (CP), Southern Naval Command,
Kochi.
3. Mr. Thanaraj,
Master Craftsman (Fitter Auto HS),
Command Transport Workshop (CTW),
Naval Base, Kochi.

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Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The Original Application having been heard on 29.02.08, this Tribunal on the same day delivered the following :

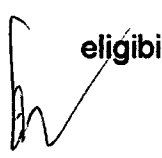
O R D E R

HON'BLE DR K B S RAJAN, JUDICIAL MEMBER

The claim of the applicant is that he should be considered for promotion to the post of Chargeman Grade II with retrospective effect from the date of occurrence of vacancy and consequential monetary benefits thereof. In addition, the applicant has prayed for a writ of certiorari declaring the promotion of respondent No. 3 as Chargeman Grade II as illegal as he was not qualified.

2. The facts: The applicant commenced his service career as Fitter Auto on 28-02-1985 and was promoted as Fitter Auto Highly Skilled on 05-04-2001. Next promotion is Chargeman Grade II for which the applicant had qualified in the trade test, vide order dated 22-08-2003 at Annexure A-1. According to the applicant, a vacancy to the post of Chargeman Gr. II arose in September, 2004 and thus, he had represented to the department to consider him for promotion against that vacancy vide Annexure A-2. The respondents have vide Annexure A-3 communication informed the applicant that actually there was no vacancy and hence, the request of the applicant for consideration for promotion as Chargeman Gr. II was rejected.

3. By Annexure A-4 communication, the applicant had requested for consideration of his promotion to the post of Asst. Foreman, for which vacancy was available as he had 29 years of practical experience including 9 years prior to his entry into the respondents' organization. Again on 17th February, 2006, the applicant represented that there being a clear vacancy for the post of Chargeman Gr. II right from 2004 and he being the only qualified candidate at that material point of time, he should be considered for promotion to the post with retrospective effect. As there was no response, the applicant had moved OA No. 109/06 which was disposed of vide Annexure A-6 order dated 10th April, 2006 with a direction to the respondents to dispose of the representation pending before them. It was in pursuance of that order that the impugned Annexure A-7 order has been passed, wherein the respondents have stated that the applicant having completed 3 years of service in the HS grade only on 5th April, 2005, and as per DOPT instruction, the crucial date for determining the eligibility conditions being '01 Jan' the applicant would be eligible for



consideration for promotion only for the year 2006 – 2007. And as Shri Thanaraj (Respondent No. 3) is rank senior to the applicant and he having also qualified in the departmental examination he was considered for promotion and was promoted.

4. The applicant has also impugned the order of promotion of the said Respondent No. 3, vide Annexure A-3. Various grounds have been taken by the applicant in his attempt to establish that he is qualified to be considered for promotion with retrospective effect from September, 2004, when a vacancy for the post of Chargeman Gr. II had arisen, while the 3rd respondent did not.

5. Respondents have contested the O.A. According to them, neither there was any such vacancy nor was the applicant qualified to be considered for promotion, as the requisite 3 years experience is not with him. Instead, the respondent No. 3, who is senior to the applicant and who had the requisite qualification was promoted against the vacancy available in 2006.

6. Rejoinder and additional reply have been exchanged, wherein the parties have reiterated their own contentions.

7. Counsel for the applicant had argued that in fact the applicant has the requisite experience and hence he ought to have been considered for promotion from the date vacancy arose. Again, the counsel contended that respondent No. 3 had no qualification nor has that efficiency to qualify in the trade test, yet he has been promoted. It has also been contended that the respondents have conducted the trade test at the fag end of the year, while it ought to have been held earlier. This, according to the applicant's counsel, was with a view to




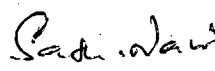
ensuring that the respondent No. 3 gets through and considered for promotion.

8. Counsel for the respondents reiterated that the applicant having not the requisite experience of three years, cannot be considered for promotion, while the third respondent qualified in the trade test held prior to 2006 and he was considered. It has also been stated that there was only one test conducted in the year in which the said private respondent qualified.

9. Arguments were heard and documents perused. The recruitment rules provide for 3 years experience as Tradesman Highly Skilled Grade I failing which Tradesman Highly Skilled Grade I with 4 years combined service in the Grade of Tradesman Highly Grade I and II failing both, Highly Skilled Grade II with 5 years service. The applicant does not possess any of them. As such, the applicant could not be considered for promotion. When the applicant does not have the requisite qualification, he cannot be treated as the aggrieved party when respondent NO. 3 had been considered for promotion and considered. The impugned Annexure A-7 and A-9 orders cannot therefore be quashed. The applicant could not make out a case and hence this OA is rejected but under the circumstances, there shall be no orders as to costs.

(Dated, the 29th February, 2008)


(Dr. KBS RAJAN)
JUDICIAL MEMBER


(SATHI NAIR)
VICE CHAIRMAN

cvt.