

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.455/10

Thursday, this the *19th* day of January 2012

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

K.P.Augustine,

CMD Gde-I, Material Organisation, Kochi.

Residing at Kalaparampil House, Palluruthi, Kochi – 6.

...Applicant

(By Advocate Mr.Johnson Gomez)

V e r s u s

1. Union of India represented by its Secretary,
Government of India, Ministry of Defence, New Delhi.
2. The Flag Officer Commanding in Chief,
Head Quarters, Southern Naval Command,
Kochi – 682 004.
3. The Material Superintendent,
Material Organisation,
Southern Naval Command, Kochi.
4. Chief Staff Officer (P&A),
Head Quarters, Southern Naval Command,
Kochi – 682 004.
5. S.G.Premajan,
CMD Gde-I, Material Organisation,
Southern Naval Command, Kochi.

...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC [R1-4])

This application having been heard on 16th January 2012 this Tribunal on *19th* January 2012 delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The facts of the case could be brought within a narrow compass.

The applicant joined the services of the second respondent in 1986 as MTD II and was promoted to the next higher post of MTD I in 1992 after

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qualifying in the requisite trade test. A promotional scheme was introduced in 1996 for the Civilian Motor drivers, vide Annexure A-1 order PC1(1)/94/D (Civ 1) dated 05-12-1996. This is based on the three grade structure which was created for staff car drivers in various ministries as per a scheme framed by the nodal ministry of Personnel (DOPT) vide OM No. 22036/1/92-ESTT (B) dated 30-11-1993. In the defence establishments, the structure so created, vide Annexure A-1 order is as under :-

- (a) Civilian Motor Driver (Ordinary Grade) 55% of the overall complement, in the pay scale of Rs. 950 – 1200
- (b) Civilian Motor Driver (Grade II) 25% of the overall complement, in the pay scale of Rs.1200 – 1800; and
- (c) Civilian Motor Driver (Grade I) 20% of the overall complement in the pay scale of Rs.1320 – 2040.

2. Promotion to the grades at (b) and (c) above is based on non-selection (seniority cum fitness). Certain minimum years of service in the lower grade and qualifying in the trade test are the conditions precedent for consideration for promotion to the higher posts.

3. In so far as promotion to the post of CMD I, the minimum years of service being 9 years, one had to wait till 2005 for reaching that post. However, in 2006, there had been an amendment relating to the date of effect of the order dated 15-12-1996 in that the same had been advanced, by Annexure A-5 order dated 28-02-2007 to 01-08-1993.

4. The applicant was functioning as CMD (OG) and his seniority position was 43 while the private respondent S.G. Premarajan was at a position below the applicant in serial No.92. Annexure A-3 order dated



20-10-1998 refers. The applicant was thereafter promoted to the next grade of CMD II vide order dated 19-02-2003 at Annexure A-4. For the next higher post, when the applicant appeared in the trade test, he could not qualify and it was in 2002 that he could qualify in the trade test, while the private respondent had qualified a year before, i.e. 2001. With the advancing of the date of effect of the order dated 05-12-1996 effective from 01-08-1993, the respondents had, on the basis of the minimum years of service in the lower post and the date of passing the qualifying trade test, issued promotion orders to the applicant and the private respondent and basing the date of promotion on the date of passing, the applicant was promoted subsequent to a date when the private respondent was promoted. The grievance of the applicant is that when the promotion is based on seniority cum fitness, the applicant's promotion cannot be posterior to that of the private respondent who is admittedly junior to the applicant. Hence this OA praying for the following reliefs:-

(i) To declare that the operation of Annexure A-2 by retrospectively operating Annexure A-1 with effect from 1.8.1993 cannot discriminate the applicant and shall not disturb the interse seniority between the applicant and the fifth respondent as on the date of issue of Annexure A-2.

(ii) To direct the respondents to promote the applicant by operate Annexure A-2 order irrespective of the date on which the applicant has passed the trade test.

Or in the alternative

To promote the applicant as CMD Grade II with effect from 1.4.2008 the date on which the fifth respondent was promoted as CMD Grade II and to pay all consequential benefits thereof.

(iii) To direct the second respondent to consider Annexure A-9 representation in accordance with law and to pass appropriate orders thereon within a time frame that this Hon'ble Tribunal may consider reasonable.

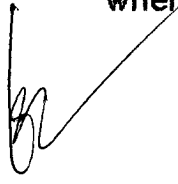


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5. Respondents have contested the O.A. According to them, the advancing of the date of effect of the 1996 order to 01-08-1993 was a policy decision, implemented in all defence establishment uniformly and when the question of promotion to the post of CMD I was considered, the applicant though senior did not qualify in the trade test, while the junior had been found qualified and thus, the seniority position of eligible candidates had to be re-scheduled and in that process, the private respondent was promoted prior to the applicant on the basis of the date of passing of the trade tests. Thus, there is no illegality in the act.

6. Counsel for the applicant argued that by giving retrospective effect to the order dated 05-12-1996 to date back to 1993, applicant, who is senior could not be promoted to the higher post while his junior could steal a march over the applicant on the basis of date of qualifying in the examination. This is against the equality clause. Counsel further argued that since nine years is the period of service and any one could qualify in the trade test at any time, by advancing the date of effect of the order of 1996 by three years, unexpectedly, the applicant who could not qualify in the trade test compared to his junior had to lose the opportunity of promotion.

7. Counsel for the respondents argued that there is no illegality in giving retrospective effect to the said order as the same applies uniformly to all. The seniority prepared at the time of consideration for promotion was based on the fulfillment of the twin conditions of completion of requisite years of service and qualifying in the trade test. In the year 2001, when the private respondent was fulfilling the twin conditions, the applicant

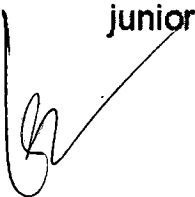


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lacked in qualification and thus, his name was not in the list of eligible candidates for promotion. It was only in the next year that he could fulfill the conditions and accordingly he was promoted in 2002. Thus, there is no illegality.

8. Arguments were considered and documents perused. The conditions of promotion include that there must be a service of nine years in the feeder post and that the individual should have qualified in the trade test. It is not the case of the applicant that it was only in 2002 that he could get the opportunity to sit for the examination and to qualify in the same. In fact when he earlier appeared in the trade test he could not qualify. When the twin conditions are fulfilled, the seniority of such eligible persons is formed and promotion granted. Thus, in 2001, when the applicant could not qualify, he could not be held to be eligible, while his junior having fulfilled the two conditions, could be considered. In fact, the promotion of the applicant in 2002 itself is as a result of retrospective effect of the 1996 order. Had the 1996 order been made effective from the date of its issue, then, for the first condition of nine years, the applicant would have had to wait till 2005.

9. Giving effect to an order with retrospective effect benefits many individual. The applicant is also a beneficiary as stated above. The grievance of the applicant is that he could not get his promotion earlier than the junior. Assuming that instead of giving retrospective effect, the requisite number of years of service at the feeder post is kept at 5 years and the date of effect of the 1996 order remains the same, even then, the junior would have, by virtue of having fulfilled the twin conditions, been



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promoted. The applicant who could not equip himself with the requisite qualification in the trade test cannot grudge against the action of the respondents in giving retrospective effect to the 1996 order.

10. The O.A. lacks merit and is therefore, dismissed. No costs.

(Dated this the 19th day of January 2012)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr. K. B. S. RAJAN
JUDICIAL MEMBER

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