

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 495 of 2006

Thursday, this the 17th day of January, 2008

C O R A M :

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

K. Thankachan,
S/o. Kochukunju Abraham,
Heavy Vehicle Driver – C, TOMD,
V.S.S.C, Thumba,
Residing at Meledathn,
Nehru Junction, Kazhakootam.

... Applicant.

(By Advocate Mr. G. Sasidharan Chempazhanthiyil)

v e r s u s

1. Senior Head Personnel and General
Administration, V.S.S.C,
ISRO P.O., Thiruvananthapuram

2. Head, TOMD,
V.S.S.C., ISRO P.O.,
Thiruvananthapuram

3. Director,
V.S.S.C., ISRO P.O.,
Thiruvananthapuram

4. Union of India, represented by its
Secretary, Department of Space,
Bangalore

... Respondents.

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)

O R D E R

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

The applicant was, on account of certain incidents on 10-04-2000 and 19-04-2000, subjected to certain disciplinary proceedings in May 2000 and the same culminated into imposition of certain penalty by the Disciplinary Authority in April 2001, which was upheld by the Appellate Authority in May 2002. However,

the applicant was successful in his challenge against the aforesaid orders of penalty and appeal before the Tribunal, which allowed his OA No. 448/2004 vide Annexure A-2 order dated 31-10-2005 and the Tribunal quashed and set aside the penalty and appellate order and also granted consequential benefits. In the meantime, the applicant was communicated of certain adverse remarks, vide order dated 26-07-2001 at Annexure A-1. As, according to the applicant, recording of the adverse remarks was on account of the penalty imposed upon him at the material point of time, after his victory before the Tribunal, he had preferred a representation for consideration of his case for further promotion as the Tribunal has allowed consequential benefits also vide Annexure A-5. However, vide Annexure A-6, the respondents have rejected the claim vide Annexure A-6. Hence this OA praying for the following reliefs:-

- (a) Call for the records leading to Annexure A4 and set aside the same;
- (b) Declare that the applicant is entitled to be considered for grant of HVD-D (Scale personal) with effect from the date of applicant's immediate junior was granted the benefit;
- (c) Direct the respondents to grant all the consequential benefits due to the applicant on being granted HVD-D (Scale Personal) with effect from the date on which applicant's immediate junior was granted the benefit.

2. Respondents have contested the OA. According to them, the applicant could not be promoted as the DPC has not recommended the case and that non promotion has no link with the penalty imposed upon the applicant.

3. The applicant has filed the rejoinder, which was resisted by the respondents by way of additional reply.

4. Counsel for the applicant submitted that the adverse remarks recorded

were on account of the imposition of penalty. This is evident from endorsement at Annexure A-5 made by the Group Head which reads as under:-

It is true that the adverse CR rating was given only because of his involvement in the disciplinary case related to OO No. VSSC/DLS/DC/673/00/01165. Shri Thankachan is a very sincere, dedicated and loyal employee. During strike periods, he has worked for the Centre, even in spite of physical threats from the striking employees. In view of this, and in view of the Court order, it is proposed that the adverse CR remarks may be expunged and he may be granted the promotion which he deserves w.e.f. 1-1-96.

5. Further, attention has been invited to para 9 of the counter, in which it has been clearly admitted, *"It is respectfully submitted that the adverse entry in the CR of 2000 was based on the incidents on 10-04-2000 and 19-04-2000."* The counsel, therefore submitted that once the very penalty order had been quashed and the Tribunal ordered for consequential benefits the respondents cannot take the stand that the reason for the applicant's supersession is not one of penalty order but only of the adverse remarks, as when the penalty order was quashed, logically, any consequence arising out of the same also impliedly gets quashed.

6. In order to ascertain the precise reason for non promotion of the applicant, the records were called for and the same perused. The said records reflect the following:-

The Committee had held as under:-

" Although while considering the candidates for promotion to higher grades under Seniority-cum-fitness, all ACRs of the residency period in the earlier grade are to be verified to ensure that they do not contain any adverse/unfavourable markings (fair and below) in respect of 'punctuality in attendance', 'Good Conduct' (integrity/discipline) and 'General Grading' in the case of Drivers a lenient view is necessary since the residency period is as high as 9 years for the first promotion and it could be more than the minimum due to post based ratio promotion. Hence, the Committee recommended the following guidelines:-



Regular Promotion:

A-B-C : 70% of the ACRs in the grades including latest 2 ACRs should be clear off the adverse/unfavourable markings in respect of the above traits.

C-D Latest 3 ACRs as above.

In the Minutes of the Departmental Promotion Committee meeting held on 14-06-2002 to consider the case of eligible Heavy Vehicle Drivers for the Post of HVD-B (Rs 4,000 - 100-6,000) in terms of DOS OM No. 2/9(13)/2001 -I dated June 27, 2001 with effect from the date of their eligibility against the name of the applicant, the Recommendations reflect "NOT RECOMMENDED." Similarly, for HVD-D Scale Personnel (5,000 - 8000) also, the DPC recorded its recommendations for the applicant as "NOT RECOMMENDED"

7. The guidelines required the latest ACRs should not contain the grading of 'Fair and below' inter alia in respect of "General Grading" and the applicant was granted only Fair, under the above Heading. And, the respondents have clearly admitted in their counter that adverse remarks had been recorded taking into account the allegations levelled against the applicant. This clearly shows that the adverse entry against the applicant has direct link with the incidents of 10-04-2000 and 19-04-2000 and as such, when the Tribunal has quashed the penalty order, the adverse remarks should also have to be obliterated. Though the Tribunal did not do specifically so, it was for the respondents to have acted accordingly. This was not done. The term consequential benefits in the order of the Tribunal includes consideration for promotion and as such, the sting attached to the applicant on account of the proceedings having sunk into oblivion, the adverse remarks should be deemed to have been expunged. Otherwise, it would amount to permitting a thing otherwise prohibited to be done indirectly. It has been held in a recent decision of *State of Haryana v. M.P. Mohla*, (2007) 1 SCC 457, 'What cannot be done directly, cannot be done indirectly { *Ram Chandra Singh v. Savitri Devi* (2004) 12 SCC 713 }'.



8. Though the applicant did not make any representation against the adverse remarks, there is justifiable reason for not making such representation, as his appeal against the penalty order had been under consideration. By the time the appeal was decided, time limit for filing representation had lapsed. This cannot be treated to mean that the applicant had pocketed the adverse remarks and waived his right to agitate against it.

9. In view of the above, the OA succeeds. It is declared that the applicant is entitled to be considered for promotion on the basis of the ACRs and the adverse remarks recorded in 2000 shall be ignored for this purpose. Respondents shall conduct review DPC and take further action on the basis of the recommendations of the DPC. This shall be completed within a period of three months from the date of communication of this order.

10. No order as to costs.

(Dated, the 17th January, 2008)


(K B S RAJAN)
JUDICIAL MEMBER


(SATHI NAIR)
VICE CHAIRMAN

cvr.