

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 522 OF 2006

Friday this the 1st day of June, 2007

CORAM :

**HON'BLE Mr. A.K.AGARWAL, VICE CHAIRMAN
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

V.P.Mohanan,
S/o Padmanabhan,
Fire Engine Driver Grade II,
Fire Station, INS Venduruthy,
Naval Base, Kochi. : Applicant

(By Advocate Mr. TC Govindaswamy)

Versus


1. Union of India represented by
Secretary to Govt. of India,
Ministry of Defence,
New Delhi.
2. The Flag Officer Commanding in Chief,
Southern Naval Command,
Naval Base, Kochi.
3. The Commanding Officer,
INS Venduruthy,
Southern Naval Command,
Naval Base, Kochi. : Respondents

(By Advocate Mr TPM Ibrahimkhan, SCGSC)

The application having been heard on 31.5.2007, the Tribunal on 1.6.2007 delivered the following:

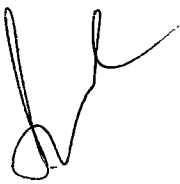
ORDER

HON'BLE Mr. A.K.AGARWAL, VICE CHAIRMAN

 This O.A has been filed by the applicant seeking a declaration that he is entitled for the benefit of 1st Financial Upgradation under the ACP scheme in the scale of Rs.4000-6000 with effect from 1.7.2003 with all consequential benefits.

2. The facts of the case in brief are as follows: The applicant has submitted that he was initially appointed as Fireman Grade-II with effect from 3.5.83 on casual basis and thereafter regularised in the year 1984. Subsequently, in the light of the orders dated 8.2.1994 of the Tribunal given while disposing of O.A.1714/93, the applicant was regularised with effect from the date of his initial appointment i.e. 3.5.83. As per the recruitment rules the post of Fire Engine Driver Gr-II is to be filled up by promotion, failing by transfer, failing both by transfer on deputation and failing all by direct recruitment. Since there were no eligible persons for promotion to the post of Fire Engine Driver Gr-II, an examination was conducted by the respondents for direct recruitment. The applicant appeared, qualified and was included in the rank list dated 2.7.85. The persons who have placed in the rank list were being appointed on casual basis from time to time. The applicant was also appointed as Fire Engine Driver Gr-II vide order dated 7.1.88. Subsequently, vide order dated 1.7.91 the applicant was transferred from INS Venduruthy to Naval Armament Depot, Alwaye.

3. The Government of India introduced ACP Scheme vide DOPT OM dated 9.8.99 providing for financial upgradation to the direct recruits who were stagnating on the same post for more than 12 years. Since the applicant was appointed in July 1991, he became eligible for 1st Financial Upgradation under the ACP scheme with effect from July 2003. The applicant made a representation dated 16.1.2004 for grant of 1st Financial Upgradation under the ACP scheme with effect from 1.7.2003, but the respondents rejected his demand. Hence this O.A.




4. Learned counsel for the applicant Shri TC Govindaswamy submitted that the applicant though was working in the department from 1983 but he was selected for the post of Fire Engine Driver Gr-II by way of a direct competition

along with a few others. The respondents are treating this appointment as promotion and therefore have denied the 1st Financial Upgradation under the ACP scheme for which the applicant was eligible after completion of 12 years. Learned counsel stated that as a result of test conducted by the respondents for direct recruitment the applicant was placed at Sl.No.8 of the rank list published on 2.7.85. He argued that the persons selected along with the applicant were initially appointed on casual basis and the regular appointment was made only in July 1991. Further, all persons selected along with the applicant have been granted 1st Financial Upgradation under the ACP scheme by counting the entire service i.e. right on the date of initial appointment. Thus in their cases the service rendered before 1991 on casual basis has already been taken into consideration and similar benefit is being denied to the applicant. Learned counsel argued that the appointment of the applicant on the post of Fire Engine Driver Gr-II was not on the basis of passing qualifying test in 1987 as has been contended by the respondents. It is stated that the order dated 1.7.91 though mentioned the word of promotion but at that time the applicant did not realise its implications in future and therefore did not objected to it. However, when the persons appointed along with him were given 1st Financial Upgradation under the ACP scheme on completion of 12 years of service he also made a similar claim. But the respondents have rejected the same. The learned counsel submitted that all persons selected along with the applicant were appointed on casual basis from the year 1985 onwards but the appointment on regular basis was made only with effect from 2.7.91. Learned counsel contended that the applicant should also be extended the benefit of first financial upgradation under ACP scheme.

5. Learned counsel for respondents Shri TPM Ibrahimkhan submitted that the applicant was initially appointed as Fireman Gr-II and was absorbed

with effect from June 1984. Subsequently, in July 1991 he was promoted as Engine Driver Gr-II. Since the applicant had already got one promotion he was not entitled for first financial upgradation under ACP scheme on completion of 12 years of service. Learned counsel submitted that the contention of the applicant to treat him as direct recruit as Engine Driver Gr-II in July 1991 has no basis. He stated that the order dated 27.6.91 issued by the headquarters transferring/promoting 26 persons with effect from 1.7.91 clearly mentions against the name of the applicant that he is being promoted as Engine Driver Gr-II. Moreover, the order dated 1.7.91 filed by the applicant also unambiguously mentions the word 'promotion'. Thus there is no doubt that the applicant got one promotion in July 1991.

6. Learned counsel for respondents drawing our attention towards the recruitment rules, submitted that Fireman Gr-II with 5 years service are eligible for promotion as Engine Driver Gr-II and the applicant was therefore qualified as per the recruitment rules. The applicant in the rejoinder has admitted that he had passed the qualifying test in the year 1987 but contends that it has nothing to do with his promotion given in July 1991. Learned counsel argued that such contention is totally devoid of merit. Learned counsel concluding his submissions has stated that since the applicant has got one promotion in July 1991 he is not entitled for first financial upgradation under the ACP scheme and the OA deserves to be dismissed.



7. We have heard both the learned counsel and have gone through the material placed on record including the service documents submitted by respondents after the arguments.

8. The moot point on which the decision of this O.A hinges is whether the appointment of applicant as Engine Driver Gr-II vide order dated 1.7.91 should be regarded as promotion or by way of direct recruitment. As per the material available on record, the applicant was eligible for promotion to the said post on this date in terms of the provisions of the recruitment rules. It has been contended from the applicant's side that respondents held a test in July 1985 for the post of Engine Driver Gr-II and the applicant was placed at Sl.No.8 in the rank list. The applicant also made a representation for treating his appointment on this post by way of direct recruitment but the same was rejected by the respondents. We notice from the representation of the applicant dated 29.6.2004 that he had applied in response to notification calling applications from the departmental candidates for appointment to the post of Engine Driver Gr-II. Even acceptance of this contention of the applicant will in no way make the selection as direct recruitment. Since direct recruitment cannot be restricted to the persons working in the sister organisations but has to be thrown open to all persons who meet the age and educational qualifications given in the notification. At best the test conducted in 1985 can be treated as Limited Departmental Competitive Examination (LDCE). An appointment to a higher post through LDCE has to be regarded as a promotion only. Secondly, the order dated 27.6.91 issued by the Headquarters, Southern Naval Command clearly mentions, against the name of the applicant, that he is promoted as Engine Driver Gr-II. Therefore, INS, Venduruthy had issued order dated 1.7.91 in pursuance of the headquarters order dated 27.6.91. Order dated 1.7.91 also clearly mentions the word 'promotion'. Further, it was mentioned by applicant's side that although a competitive examination was held in 1985, a rank list was prepared but all the listed persons were regularised only from July 1991. From the rejoinder filed by the applicant, we observe that out of six, three persons though senior to the applicant were regularised on the post of Engine Driver Gr-

II only in the year 1996. Thus the applicant has no claim for being treated as a direct recruit right from July 1991.

9. In view of the foregoing, we hold that the appointment of the applicant to the post of Engine Driver Gr-II cannot be treated as 'direct recruitment'. The applicant got this post by way of promotion and therefore he is not entitled for first financial upgradation under the ACP scheme. The O.A is devoid of merit and is accordingly dismissed with no order to costs.

Dated, the 1st June, 2007.



GEORGE PARACKEN
JUDICIAL MEMBER



A.K. AGARWAL
VICE CHAIRMAN

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