

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

O.A. No.573/86

VM Joseph

: Applicant

Vs

1 Scientific Adviser to
Raksha Mantri
Room No.137, South Block
New Delhi

2 The Director
NPOL, Naval Base
Cochin-682 004

: Respondents

Mr Toseph J Thayamkeril

: Counsel for Applicant

Mr K Karthikeya Panicker, ACGSC

: Counsel for Respondents

CORAM

Hon'ble Shri S P Mukerji, Administrative Member
and

Hon'ble Shri G Sreedharan Nair, Judicial Member

(Order pronounced by Hon'ble Shri SP Mukerji,
Administrative Member)

O R D E R

The applicant is an employee in the Stores Section
of the Naval Physical and Oceanographic Laboratory, (NPOL)
Cochin has moved the Tribunal under Section 19 of the
Administrative Tribunal's Act of 1985 praying that
the impugned O.M. dated 30.10.85 (Annexure-3) should
be set aside and the respondents be directed to
implement the judgement of the High Court of Kerala
in OP No.10013 of 1983-J and to give him retrospective
promotion as Senior Store Keeper from 31.1.1978 and
as Senior Store Keeper(Grade-I) with effect from

31.8.82. The brief facts of the case can be recounted as follows. The applicant joined the Ministry of Defence as a Lower Division Clerk on 5.11.1969 and later he was appointed as Store Keeper in the Central Ordnance Depot, Poona on 27.4.71. He was made quasi-permanent on 27.4.74 and a permanent Store Keeper on 1.5.74. On compassionate ground, on his own request he was transferred as Store Keeper, NPOL Cochin on 6.6.77 and placed at the bottom of the seniority list. He was promoted to the next higher grade of Senior Store Keeper (SSK) against a regular vacancy on 22.2.80. On 15.7.80 an intermediate grade of SSK-I between SSK and Store Superintendent was created. His next senior officer Shri K Anujan in the grade of SSK was promoted as SSK-I on 31.8.82. The applicant claims that he should have been promoted as SSK on 31.1.78 instead of 22.2.80 and SSK-I on 31.8.82 along with his next senior officer Shri Anujan. He claims that on 31.1.78 there was a vacancy in the grade of SSK and while his immediate senior Shri Anujan was promoted on ad-hoc basis as SSK against one of the available vacancies and regularised on 20.4.79, he was not promoted even on ad-hoc basis in 1978 when there was a vacancy. He also claims that there was still another vacancy in the SSK-I Grade even on 31.8.82 when his immediate senior was so promoted. It appears that the applicant had moved the Writ Petition No OP.10013 of 1983-J before the Kerala High Court and that High

Court in their order dated 30.7.85 directed the respondents to consider the claim of the applicant for ante-dating his promotion on ad-hoc basis by applying the same rules and principles on which his immediate senior Shri Anujan had been so promoted.

According to the applicant that judgement would entitle him to be promoted as SSK on 31.1.78 and as SSK-I on 31.8.82. In pursuance of that judgement the impugned order dated 30.10.85 was passed against which the applicant is before us.

2 In the impugned order it has been stated that the applicant's case was put up before the Review DPC on 15.10.85. It was found that ^{as} he completed three years' of regular service as Store Keeper from 6th June, 1977, only on 7th June, 1980 he ~~could not~~ be promoted as SSK earlier than 1980. Regarding promotion as SSK-I, the impugned order states that under the recruitment rules he completed three years' of regular service as SSK only on 23rd August, 1983 and since the post of SSK-I had been taken out of the purview of DPC-III and the recruitment ~~to which~~ promotion rules ceased to exist with effect from 7.11.81, the petitioner could not be considered for that post.

3 We have heard the arguments of the learned counsel of both the parties and gone through the documents carefully. So far as the applicant's claim for promotion as SSK is concerned, the High Court of Kerala ~~had~~ turned down the plea of the respondents that ad-hoc promotions could not be made against

regular vacancies and directed that the same rules and principles should be followed in case of adhoc promotion of the applicant as were followed in the case of Shri Anujan, his immediate senior in the ^{again} SSK Grade. Now, the respondents have in the impugned ^{another} order taken ~~out~~ ⁱⁿ the plea in declining retrospective [&] promotion of the applicant with effect from 31.1.78 instead of 22.8.80 as SSK and the ground taken by them is that the applicant counts his qualifying service as Store Keeper ~~in the different~~ ^{from the} date on [&] which he was transferred ~~as such~~, ^{at} ^{on} his own request on compassionate grounds to NPOL, Cochin i.e. from 6.4.77. It means that his entire service in the equivalent grade of Store Keeper at Poona where he had been working as such, from 27.4.71 and made permanent Store Keeper with effect from 1.5.74 would be lost. This to our mind is gross injustice. The recruitment rules for the post of SSK as given in SRO No. 228/80 makes Store Keepers with three years regular service in the grade ~~is~~ ⁱⁿ eligible for consideration for promotion as SSK. This Tribunal has held that while for the purpose of seniority ~~for~~ ⁱⁿ a particular unit where a person is transferred on his own request, the previous service in equivalent grade need not count, such previous service cannot be written off altogether for the purpose of reckoning qualifying service for higher promotions. Since it is not denied that the applicant had been working as Store Keeper on a regular basis at least from

1.5.74 when he was made a permanent Store Keeper, the service atleast from 1.5.74 has to be counted as regular service as Store Keeper for the purpose of promotion as SSK. Since by 1978, he had completed more than three years of regular service as Store Keeper, there is no reason why he should be considered for promotion as SSK between 1978 and 1980 either on adhoc or regular basis, if there are vacancies which can be filled up in either of these modes.

4 The next question to be determined is about the applicant's claim for promotion as SSK-I with effect from 31.8.82, when his immediate senior Shri Anujan was so promoted. We are not ~~persuaded~~ to accept the contention of the respondents ~~for~~ in the impugned order that since the post of SSK-I was deleted and taken out of the purview of DPC-III, the applicant cannot be considered for promotion as SSK-I. The respondents in their Counter Affidavit dated 18th August, 1986 appended a Seniority List of SSKs at Ext. R-I, wherein Shri Narayanan Kutty has been shown as promoted as temporary SSK-I with effect from 31.8.82 and so is Shri K Anujan. It cannot, therefore, be accepted that the post of SSK could not be filled up after 7th November, 1981. The difficulty, however, arises from the fact ~~is~~ ^{is} that the applicant has claimed promotion as SSK-I with effect from 31.8.82, not ~~the~~ ^{because} ~~reason of any next of his~~ ^{but} junior was promoted as SSK-I on that date, ^{because} ~~any next of his~~ ^{but}

his immediate senior Shri Anujan was so promoted on that date. The applicant's contention is that there were five posts of SSK-I against which four of his seniors ^{Sarwa} namely, Shri Joy, Mohan Kumar, Narayanan Kutty and Anujan were appointed on various dates between 3.12.80 and 31.8.82. This is also substantiated by Ext.R-I produced by the respondents. According to the applicant, the fifth post of SSK-I had been lying vacant since 23.11.81. This has not been specifically denied by the respondents. If such a vacancy existed, the applicant should be considered for promotion as SSK-I from the date he completed three years of regular service as SSK, either from 22.8.80 when he was actually promoted as SSK or from an earlier date, if he is found to have completed three years of regular service as SSK on that date by virtue of his ante-dated promotion as SSK as directed above.

5 In the facts and circumstances, we allow the application to the extent indicated below:-

- (a) The applicant's service as Store Keeper at Poona at least from 1.5.74 when he was made a permanent Store Keeper should be reckoned as qualifying service for the purposes of eligibility for promotion as Senior Store Keeper at NPOL, Cochin;
- (b) The Review DPC-III should consider the applicant for ad-hoc or regular promotion as the case may be, against ad-hoc/regular vacancies between 31.1.78 and 22.8.80;
- (c) On the basis of the recommendations of the ^{Review} DPC-III, if any the applicant should be promoted as SSK either on ad-hoc or on regular basis by ante-dating his promotion from 22.8.80;

(d) The respondents should identify the un-filled posts of SSK-I from 1982 to to-date and consider the applicant for promotion as SSK-I with effect from the date he can be deemed to have put in three years regular service as SSK either from 22.8.80 or an earlier date with effect from which the Review DPC recommends his name for regular promotion as per (b) above.

We also direct that action on the above lines should be completed within four months from the date of communication of this order.

6 There will be no order as to costs

23.2.88

SPM

(G Sreedharan Nair)
Judicial Member
23.2.88

(S P Mukerji)
Administrative Member
23.2.88

Index: Yes/No