

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A.No.596/2005
Wednesday, March 07, 2007

CORAM :

**HON'BLE MR.N.RAMAKRISHNAN,ADMINISTRATIVE MEMBER
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

Sentimon Mathew
Puthenpuryil House,
PO Panathady, Kolichal,
Kasaragod-671532.

... Applicant

By Advocate Mr.Vipindas

V/s.

1. Union of India represented by
The Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. The Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances and Pensions,
North Block, New Delhi.
3. The Director General of Assam Rifles,
Mahanideshalaya Assam Rifles,
Director General Assam Rifles,
Shillong-II, Assam State.

... Respondents

By Advocate Mr.TPM Ibrahim Khan SCGSC

The application having been heard on 7.3.2007 the Tribunal delivered the following on the same day:

Hon'ble Mr.N.Ramakrishnan, Judicial Member

(ORDER)

Applicant absent even on second call. This is the third time he is absent in a row.

In the circumstances OA is dismissed for non prosecution. No costs.

N.R.K

**GEORGE PARACKEN
JUDICIAL MEMBER**

**N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER**

abb

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Mahanideshalaya Assam Rifles,
Director General Assam Rifles,
Shillong-II, Assam State. Respondents

By Advocate Mr.TPM Ibrahim Khan SCGSC

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Hon'ble Mr.N.Ramakrishnan, Administrative Member

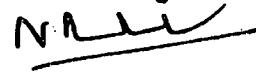
(ORDER)

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**GEORGE PARACKEN
JUDICIAL MEMBER**

abp


**N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER**

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 596/2005

TUESDAY THIS THE 25TH DAY OF JUNE, 2007

C O R A M

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

Sentimon Mathew
Puthenpurayil House
PO Panathady, Kolichal
Kasaragod-671532

..Applicant

By Advocate Mr. Vipindas

Vs.

- 1 Union of India represented by
the Secretary, Ministry of Home Affairs
North Block, New Delhi.
- 2 The Secretary
Department of Personnel and Training
Ministry of Personnel, Public Grievances and Pension
North Block, New Delhi
- 3 The Director General of Assam Rifles,
Mahanideshalaya Assam Rifles
Shillong II, Assam State

..Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC.

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This Application is filed against the order of the respondents rejecting the representation of the applicant for consideration of grant of first financial upgradation under the ACP Scheme.

2 The sum and substance of the applicant's case is as given below:
The applicant was enrolled in Assam Rifles as Rifle Man/Operator Radio Line on 16.9.1982 and discharged from service on 1.9.2004. He passed a Departmental competitive examination and was remustered as Cipher-III from 5.4.1986. Thereafter, he underwent further training, passed

examination and was classified as Cipher-II and later as Cipher Class-I, but was not granted any financial benefits. He had also qualified the 'S' course with effect from 13.1.2003 and he ought to have been granted an upgradation as 'Naib Subedar' on completion of 12 years of service. Yet he was not given any promotion. But his juniors who were re-mustered as Cipher on a subsequent date were awarded with ACP. Similarly placed persons like him were granted with ACP after completion of 12 years and second ACP after 24 years as per the specific orders of the Government of India. The applicant had submitted Annexure A-1 representation before the 2nd respondent on 26.11.2004 for the above reason which was not considered. The applicant has also submitted that a clarification issued in respect of personnel of Border Security Force on this subject at Annexure A-4 would also be applicable to his case as he is also a similarly placed person. But the respondents have failed to consider this aspect and he has been discriminated by denial of the benefits even after 21 years of continuous service.

3 The following reliefs are sought:

- (i) A declaration that the remustering of the applicant is only a conversion and not a financial upgradation as per the Assured Progression Scheme
- (ii) A declaration that the petitioner is entitled for the 1st Financial Upgradation as per the ACP Scheme and to grant the consequential benefits.
- (iii) Allow the Original Application.
- (iv) pass such other and further orders which this Hon'ble Tribunal deem just and proper in the circumstances of this case.
- (v) grant the applicant the costs of this proceedings.

4 The respondents filed a reply statement taking preliminary objection that the office of the Director General, Assam Rifles the appointing authority is located at Shillong outside the territorial jurisdiction of this

Tribunal and therefore the Application is liable to be dismissed on that ground itself. They have admitted the factual position that the applicant was enrolled in the Assam Rifles on 16.9.1982, passed the examination for remusteration into Cypher category and was accordingly upgraded from Rifleman/Operator Radio Line to Havildar/Cipher w.e.f. 5.4.1986. On completion of 21 years 11 months and 15 days of qualifying service he applied for voluntary retirement with pensionary benefits and the same was granted. According to them he was not eligible for grant of financial upgradation under the ACP scheme since he has availed first financial upgradation on remusteration from Rifleman Cypher Operator Radio Line to Havildar/Cipher. Further, no junior of the applicant has been granted ACP and since he went on discharge on his own request on completion of 21 years of service, he could not qualify for the second financial upgradation also. Moreover, comparison with BSF personnel according to the respondents is not in order as the Recruitment Rules and policies of different organisations are different. The applicant was informed of the above position that he was not eligible after it was duly considered by the competent authority. Hence there is no arbitrariness in the decision which has been taken in the light of clarifications given by the Department of Personnel and Training letter No. 35034/1/97-Estt(D) Vol.IV dated 10.2.2000 which is applicable to all Departments of Government of India.

5 No rejoinder has been filed by the applicant.

6 We have heard Shri T.K. Vipindas for the applicant and Shri Shaji V.A. on behalf of the SCGSC appearing for the respondents.

7 The question that is to be decided is whether remusteration of the applicant as Havildar/Cipher in 1986 from Rifleman was a financial upgradation disentitling the applicant for the grant of first upgradation under the ACP Scheme which is the stand taken by the respondents. The respondents have relied on the instructions issued at point No. 8 in the DOPT letter dated 10.2.2000 providing clarifications on the points of doubt



raised by the Departments. According to this clarification no. 8, if the relevant Recruitment Rules provide for filling up of vacancies by direct recruitment, induction through limited departmental competitive examination may be treated as direct recruitment for the purpose of benefit under the ACP Scheme. The example given pertains to the cases of Grade-D employees appointed as LDCs or Stenographers Grade-D/Junior Stenographers inducted as LDCs. If the Recruitment Rules, on the other hand provide for filling up of the vacancies on the basis, of departmental examination, only such appointments shall be treated as promotion. Therefore the respondents contended that in the instant case, as per the Recruitment Rules at Annexure R-4, the post of Havildar is to be filled up by considering members of the Assam Rifles holding the rank of Rifleman in the trade of Operator Radio Line with 8 years service in the grade and not by direct recruitment. As such, the applicant's appointment as Havildar/Cypher has to be treated as promotion. These contentions are not acceptable for the reasons that in the first instance, no departmental examination has been prescribed under the Recruitment Rules and under column 13 thereof regarding constitution of DPC in the case of promotions, it has been clearly indicated that it is 'not applicable' making it clear that the consideration of the members of Assam Rifles for conversion to Cypher category is not to be considered as 'promotion'. Secondly, these Recruitment Rules as averred by the respondents have been issued in the year 2000 only. The applicant had been remustered into Cypher category in 1986. It is therefore evident that these rules were not also applicable at that point of time. It is also noticed that the applicant was remustered to the post of Havildar Cypher before he had completed even four years of service. Therefore going by all these special circumstances, it has to be concluded that his appointment in the Cypher category can only be termed as a 'conversion' and not as 'promotion' as contended by the respondents. This view is buttressed further by the clarification on the ACP Scheme at

Annexure A-4 communicated by the Ministry of Home Affairs regarding personnel of the Border Security Force (BSF) wherein at points © and (d) thereof it has been clearly stated that appointment of Constable (General Duty) after qualifying in the conversion test and appointment into Cypher category will be treated as conversion and not promotion. Though the respondents contended that these clarifications were relevant only for BSF personnel, we are not convinced why the same cannot hold good for the personnel in Assam Rifles when the categories being similar and duties and functions are more or less similar though technically they belong to two different organisations. Further as already stated above even the clarification of DOPT dated 10.2.2000 relied on by the respondents and the Recruitment Rules to the post of Havildar do not lend any support to the stand taken by the respondents.

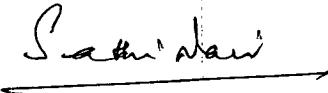
8 In these circumstances we are inclined to subscribe to the view that the applicant who was remustered into Cypher category after 4 years of service in 1986, has to be treated as a direct recruit to that category and he would be eligible for the first ACP on completion of 12 years of service in the grade. With such a declaration as above we allow the O.A. The respondents are directed to grant the first financial upgradation in accordance with the ACP Scheme to the applicant together with the consequential benefits. This shall be done within a period of three months from the date of receipt of a copy of this order. No costs.

Dated 25.6.2007



DR. K.B.S. RAJAN
JUDICIAL MEMBER

kmn



SATHI NAIR
VICE CHAIRMAN