

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 74/2000

Friday this the 22nd day of March, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

T.Venkatesan, AD(I) Retd.
residing at No.4, Chellandiamma Nagar
Venkata Laxmi Nagar Layout
Singanallur P.O.
Coimbatore-641 005.

...Applicant.

(By advocate Mr.N.N.Sugunapalan)

Versus

1. Commander Works Engineer
Naval Base P.O., Kochi.
2. Chief Engineer (Navy)
Kataribagh Naval Base
Kochi.
3. The Engineer in Chief
Army Headquarters
Defence Headquarters (p.O.)
New Delhi.
4. Union of India represented by
The Secretary
Ministry of Defence
New Delhi.

...Respondents

(By advocate Mrs.P.Vani, ACGSC for R1-4)

The application having been heard on 22nd March, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant aggrieved by A-4 order dated 21.8.96, A-8 order dated 17.11.98 and A-9 order dated 7.6.99 by which he had been granted notional promotions to the grades of AO-II and AO-I from the dates of promotion of his immediate junior, rejection of his representation dated 19.6.98 and his pay fixation in the grade of AO-I with effect from 1.1.96 on notional basis respectively has filed this Original Application seeking the following reliefs:



- a) Set aside A-4, A-8 and A-9.
- b) Direct the 3rd and 4th respondents to consider and pass orders on A-5, A-6 and A-7 in accordance with law.
- c) Direct the respondents to grant the applicant salary and allowance in the grade of AO-I w.e.f. January 1994 till his retirement.
- d) Award exemplary costs to the applicant.
- e) grant such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- f) Grant salary and allowances to the applicant in the grade of AO-II after refixing salary and allowances from 1990 to 1994 based on his eligible increments from 1984 to 1990.
- g) Declare that the applicant is entitled to be granted his pensionary benefits calculated as if he was retired from the SAO cadre.

2. The brief facts which are not disputed in this case are as follows:


3. Applicant was appointed as LDC on 4.6.1960. He was promoted as UDC on 25.1.65, as office Superintendent (OS-I) on 17.4.82, office Superintendent (OS-II) in 1988 and as Administrative Office Grade-II on 17.7.90. He retired from service on 30.6.96. While working as AO-II, he approached the 3rd respondent with A-1 representation dated 12.2.94 praying for promotion as Administrative Officer-I or S.A.O. (Senior Administrative Officer). He filed OA 1244/95 in this Tribunal. This Tribunal by A-2 order dated 29.9.95 directed the respondents to consider and pass a speaking order on the applicant's representation. By A-3 letter dated 24.5.96 the applicant was informed that his case was being processed. By A-4 dated 21.8.96 the applicant was notionally promoted with a stipulation that the same would be done with reference to the earliest date of physical promotion of his immediate junior. On the basis of these orders, the applicant became eligible for promotion to different grades as indicated below:



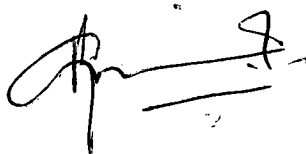
| <u>Designation</u> | <u>Date of physical promotion</u> | <u>Date of notional promotion as agreed to by the respondents and orderd.</u> |
|--------------------|-----------------------------------|---|
| OS Gr.II | 17.4.82 | --- |
| OS Gr.I | 19.9.88 | 30.9.83 |
| AO Gr.II | 17.7.90 | 16.6.84 |
| AO Gr.I | --- | 28.6.90 |

Date of Retirement : 30.6.96.

4. On coming to know that his junior one Mahadevan was given notional promotion with effect from 8/87 while he had been given his retirement benefits such as notional promotion and consequential pensionary benefits with effect from 8/90 only, the applicant preferred A-5 representation dated 27.6.97 to the third respondent. He also filed A-8 reminder dated 18.11.97. Not getting any response, he filed A-7 representation dated 19.6.98. Applicant received A-8 letter dated 17.11.98. Alleging that A-8 had been issued on a wrong understanding of the legal position and he was never informed of any adverse remarks or any reason for his getting the alleged lower grading in the review DPC dated 8.8.96 and that the only question that remained was of notional promotion, the applicant submitted that the exclusion of the applicant from the earlier promotion panels of 1986 and 1988 was illegal and arbitrary. He submitted that subsequently A-9 order dated 7.6.99 was passed by the first respondent. Applicant alleged that A-9 was bad in law. Respondents subsequently passed A10 order dated 12.5.2000 by which he was granted promotion with effect from 7.8.87. According to the applicant, had the third respondent acted in time in 1994 itself when he made A-11 representation, he would not have come before this Tribunal and the failure on the part of the third respondent to act on A-11, A-1 etc. had resulted in the applicant's present predicament.



Applicant is also aggrieved by the denial of salary and allowances from 1987 onwards. A-4 was issued pursuant to A-2 judgement of this Tribunal. A-4 could not supplement reasons or fill up the gap in A-4 order as there was no mention of any adverse remarks or lower grading and hence A-4 and A-8 were bad in law and deserved to be set aside. According to the applicant, A-9 put into effect A-4 and A-8 without considering the fact that A-5, A-6 and A-7 representations of the applicant were pending consideration by the 3rd and 4th respondents. This was against the principles of natural justice and was arbitrary. Applicant was entitled for having his salary and allowances in AO-II grade calculated from 1984 onwards. According to him, in 1990 he was not given the benefit of the increments he would have received from 1984 to 1990 in AO-II grade when fixing his pay. He was entitled to the higher pay for having physically performed the duties as AO Gr.II. He had been denied his promotion to AO-I by the 3rd respondent for no fault of his. He was entitled for promotion on the date on which his junior Mahadevan was physically promoted and drawn his pay and allowances. He filed A-11 & A-1 on time and also approached this Tribunal in OA 1244/95. It was because of the inaction of the third respondent for 2 years he had been made to suffer for no fault of his. He was entitled to be granted all his arrears of salary and allowances from January 1994 till the date of his retirement as if he had physically worked in that past had not the department wrongly denied the same to him.



5. Respondents filed reply statement resisting the claim of the applicant. According to them, the applicant was considered for promotion to Administrative Officer Grade II at par with Mahadevan against the vacancies of 1983 through a review DPC held on 8.7.96 by reviewing the original DPC held on 4.7.84. The applicant received lesser grading than that of Mahadevan from the review DPC. Promotion from office Superintendent Grade I to AO Grade II was carried out on selection basis for which minimum bench mark was prescribed to be "Good" as per the then Recruitment Rules at that time. Due to low grading assessed by the original DPC held in 1984, the applicant could not be promoted from office Superintendent Grade I to AO Grade II and consequently as per the recommendation of the review DPC the applicant's name had been placed below Mahadevan. Candidates graded to be 'outstanding' would rank en block senior to those who are graded to be 'very good' and candidates graded to be 'very good' would rank en block senior to those who are graded to be as 'Good' and would be placed in the select panel accordingly upto the number of vacancies available maintaining their inter-seniority in the feeder category. It was not that the applicant had any adverse remarks but of average performance and average performance as per the extant instructions had to be regarded as routine and undistinguished. It was only performance which was 'above average' and really noteworthy which should entitle an officer to recognition and suitable reward in the matter of promotion. Applicant was also considered for promotion by the DPC to the grade of AO Grade I against the vacancies for the year 1986 through a review DPC on 2.8.96 by reviewing the original DPC on 4.8.87. But due to the lesser grading the applicant did not find a place in the select panel against 1987.



He was considered for promotion against the DPC held on 16.9.88 through review DPC. Again due to lesser grading he could not find place in the select panel of 1988. He was further considered for promotion by reviewing the subsequent DPC originally held on 25.1.90. His name was inserted in the select panel of 1990. for promotion to the grade of AO Grade I through an amendment to the original panel issued on 9.8.96. The applicant had by then retired from service and he could not be physically promoted but promoted notionally. Hence there was no question of payment of pay and allowances for the period for which he had not actually served.

6. Additional reply statement and rejoinder were filed by the respondents and applicant respectively.

7. Heard the learned counsel for the parties. Mr. Balakrishnan appearing for the applicant argued the matter extensively and submitted that it is because of the delay in consideration of his representation filed in 1994 and in conducting the review DPCs after the direction issued by this Tribunal in OA 1244/95 that the applicant could not physically get the post of AO-I and hence applying the ratio of the judgement of the Hon'ble High Court of Kerala in Sivarajan Vs. State of Kerala 1993(2) KLT 287, since it is not the fault of the applicant that he had not been able to physically discharge the functions of AO Gr.I, the applicant was entitled for the arrears of salary and allowances at least from 1994 till the date of his retirement in the grade of AO Gr.I. He also submitted that the



applicant having been physically promoted as AO Gr.II from 17.7.90 and now the respondents having agreed to the notional promotion from 16.6.84 the applicant's pay on 17.7.90 should be fixed as AO Gr.II taking into account the increments he would have earned had he been promoted with effect from 16.6.84 and he would be entitled for the arrears of the difference of the pay and allowances from 17.7.90 onwards. Applicant would also be entitled to the arrears of the difference of the pay and allowances as OS Gr.I from 9/1988 which post he had physically worked as now the respondents have issued orders that the applicant would be entitled to notional promotion as OS Gr.I with effect from 30.9.1983. Learned counsel for the applicant also submitted that the applicant's pensionary benefits should also be paid on the above basis. He also relied on the judgement of the Hon'ble Supreme Court in S.Krishnamurthy Vs. General Manager, Southern Railway AIR 1977 SC 1868 in support of his submissions. Smt'.P.Vani, learned Additional Central Government Standing Counsel for the respondents submitted that the applicant having approached this Tribunal through OA 1244/95 and accepting the judgement therein by which A4 order had been issued cannot now reopen the said issue as the applicant had retired from service on 30th June 1996. He had not worked as AO Gr.I and so his pensionary benefits had been fixed taking into account the notional fixation of pay as AO Gr.I and he would not be entitled for any of the arrears as his promotions were of notional in nature. She took us through the judgement of the Hon'ble High Court of Kerala relied on by the learned counsel for the applicant and submitted that the said order would not have any



applicability in the facts and circumstances of the case in that the High Court had ordered payment of arrears to the petitioner therein on the basis of an earlier order of the High Court in favour of the petitioner therein.

8. We have given careful consideration to the submissions made by the learned counsel for the parties, the rival pleadings and have perused the documents brought on record. We find that the applicant's grievances are two fold. First, he is aggrieved by the statement of the respondents in their A-8 reply that the applicant had not been found suitable for inclusion in the 1987 & 1988 panels of AO Gr.I because of lesser grading given to him. The second grievance of the applicant is regarding the arrears of pay and allowances due to him as AO Gr.II & AO Gr.I from 1994 onwards.

9. As regards his grievance regarding the findings of the DPC, we find that the applicant has not given any valid reason for any interference by this Tribunal in the DPC findings. It is now well accepted that in judicial review, Courts/Tribunals cannot act as appellate authority over the findings of DPC. In this case as no malafides have been alleged against the DPC proceedings, we do not find any substance to interfere with the findings of the DPC which had found him as not eligible for promotion as AO Gr.I during 1987-88 DPC. We also do not find any substance in the plea that no adverse remarks were communicated to him. As per the procedure it is the DPC to consider the annual confidential reports which are available at the relevant time and if the DPC had found the grading of the applicant lower



than that of Mahadevan and Mahadevan had superceded him, this Tribunal cannot sit as appellate authority over the decision of the DPC. Hence this limb of the applicant's grievance has no merit.

10. The second grievance is regarding the arrears of pay and allowances as OS Gr.I, AO Gr.II and AO Gr.I. The applicant had been promoted on notional basis by the respondents by their own order pursuant to A-4 order dated 21st August, 1996 and the pay fixation statement had been issued by them on 10.3.97. We find considerable force in this claim of the applicant. The applicant had been admittedly physically promoted as OS Gr.I in 1988 as against his notional promotion ordered from 30.9.83. We also find that by R-2 order dated 6.1.97 the applicant's pay in OS Gr.I had been fixed with effect from 30.9.83. As the applicant worked as OS Gr.I from 19.8.1988, when he was physically promoted in 1988 his pay will have to be fixed at a higher stage, taking into account his annual increments due from the notional promotion date 30.9.83. He would be entitled for the difference of the pay and allowances which he had already received and the pay and allowances which he would be receiving by virtue of his revised fixation for the duration he actually worked as OS Gr.I. Again, the applicant was physically promoted as AO Gr.II with effect from 17.9.90 whereas as per A-4 order dated 10.3.97 he had been given notional promotion with effect from 16.6.84. By R-3 fixation statement, his pay had been fixed with effect from 16.6.84 in the grade of AO Gr.II. As he had actually worked with effect from 17.7.90, his pay fixation on that date will have to be worked out giving him the annual increments due as AO Gr.II



with effect from 16.6.84. He would also be entitled for the difference of the pay and allowances between what he had actually received and what he would be entitled to as per this fixation. No rule or order had been brought to our notice by the respondents by which these arrears can be denied to the applicant. Notional promotion had been given to the applicant only for the reason that he had not physically occupied the post on those dates but from the actual dates of occupation of the post, he is entitled for the due salary and allowances and hence for the difference between what he is due and what he received, as arrears of the pay and allowances.

11.. The next question that comes up is regarding the notional promotion of the applicant with effect from 28.6.90 as AO Gr.I. This order had been issued only on 10.3.97 and the applicant had retired on 30.6.96. While he was in service he had never been promoted as AO Gr.I. According to the respondents, this would be only notional in nature. Applicant claims the actual monetary benefit from 1994.

12. We have considered the rival submissions. We have also perused the judgement in Sivarajan Vs. State of Kerala relied on by the learned counsel for the applicant as also the judgement of the Hon'ble Supreme Court in S.Krishnamurthy Vs. General Manager, Southern Railway. On a perusal of the judgement of the High Court of Kerala, we find that the facts and circumstances obtaining in that case are not applicable in the case of the applicant in this OA. In this respect, we find force in the submissions made by the learned counsel for the respondents. In



the judgement in Krishnamurthy's case, the Hon'ble Supreme Court had given the benefit of the salary to the applicant from the date he had approached the High Court. The details of the case are as follows:

"The appellant joined the Southern Railway as a clerk way back in October 1948 and was confirmed as train clerk on April 1, 1949. He worked his way up and became a wagon chaser in an ex cadre post. Thereafter, he was entitled to become Assistant Yard Master but, for reasons which we need not go into, he continued as wagon chaser. The promotion post for Assistant Yard Master is that of traffic inspector. Unfortunately the appellant was not considered for that post although others similarly situated like him were absorbed as traffic inspectors. The Railway Administration discovered the injustice and set right the error of not treating the appellant as an Assistant yard Master by its order dated November 10, 1965; but by this time others had been absorbed as traffic inspectors and the appellant was not. His representation proving unsuccessful, he moved the High Court under Art.226 for the relief of being treated as traffic inspector with effect from 1st January 1959 when those others similarly situated were so absorbed. The conflicting fortunes of the case have already been indicated and all that we need say is that in the light of the order of the Railway Administration dated November 10, 1965, there has been an injustice inflicted on the appellant.

On the strength of the policy decision taken on December 31, 1958 the appellant was eligible to be absorbed as traffic inspector like his confrere but was not. Moreover, he had actually worked as Assistant Yard Master for some time. In the circumstances, he was entitled to be taken into the cadre of traffic inspector. We cannot put the clock back for all purposes and treat him as having been notionally appointed as traffic inspector with effect from January 1, 1959. All that we can do, in conformity with his right and in the justice of the case is to direct the respondent to appoint him as a traffic inspector from the date on which he came to the High Court with his writ petition viz. December 20, 1967. Those who were promoted earlier might be adversely affected if we direct the appellant's appointment as traffic inspector with effect from an earlier date. We desist from doing so. however, we categorically direct that the Railway Administration shall appoint the appellant as traffic inspector with effect from December 20, 1967."



13. In the present OA, the applicant for the first time approached this Tribunal in 1995 by filing OA 1244/95 which was disposed of by the Tribunal on 29.9.95 giving three months' time to respondents to dispose of his representation. As against the three months, the respondents had disposed of the representation only in May 1996 and the final orders were issued in August, 1996. Had the respondents acted with a little more promptitude, perhaps it would have been possible for the applicant to be physically promoted as AO Gr.I before his retirement. In this view of the matter, we are of the view that had the respondents dealt with the representation within the time permitted by this Tribunal, they could have finalized the review DPC proceedings etc. within three months thereafter. Accordingly, as far as the arrears of pay and allowances as AO Gr.I is concerned, we are of the considered view that we should allow the claim of the applicant from a date six months from the date of the order of the Tribunal i.e. 29th September 1995 to the date of his retirement on 30.6.96 taking into account his notional promotion as AO Gr.I from 28.6.90.

14. In the result, this OA is disposed of with the following directions:

- (i) Respondents shall work out
- (a) the arrears of the difference of the pay and allowances of the applicant as OS Gr.I from the date of his actual promotion in 1988 to the date of his promotion as AO Gr.II, after fixing his pay as OS Gr.I in 1988 as if he had been promoted as OS Gr.I from 30.9.83.



(b) the arrears of the difference in the pay and allowances from 17.7.90 to 29th March 1996 after fixing his pay on 17.7.90 taking his date of notional promotion as 16.6.84 as AO Gr.II and allowing his annual increment due to him in that grade from 16.6.84 and

(c) the arrears of the difference in the pay and allowances as AO Gr.II and I from 30.3.96 to 30.6.96 the date of his retirement.

(ii) Respondents shall disburse the worked out arrears as above within a period of four months from the date of receipt of a copy of this order.

(iii). As legitimate dues of the applicant had not been paid by the respondents when he had represented and he had to pursue the matter, we are of the view that the respondents shall pay an amount of Rs.1000/- as costs to the applicant.

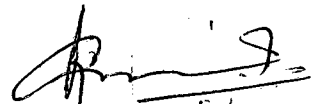
15. The OA stands disposed of as above.

Dated 22nd March, 2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

aa.



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of representation submitted by the applicant to the 3rd respondent dated 12.3.94.
2. A-2: True copy of order in O.A 1244/95 dated 29.9.95 of this Hon'ble Tribunal.
3. A-3: True copy of letter No.90237/5116/EIC (Legal-8) dt.24.5.96 issued by the 2nd respondent.
4. A-4: True copy of letter No.90721/TU/48/E18 (P&A) dt.21.8.96 issued by the 3rd respondent to the applicant.
5. A-5: True copy of representation submitted by applicant to the 3rd respondent dt.27.6.97.
6. A-6: True copy of letter dated 18.11.97 submitted by the applicant to the 3rd respondent.
7. A-7: True copy of order representation dated 19.6.98 submitted by the applicant to the 4th respondent.
8. A-8: True copy of letter No.17451/TV/77/EIR dated 17.11.98 issued by the 1st respondent to the applicant.
9. A-9: True copy of letter No.spl.PTO No.06/99 dt.7.6.99 issued by the 1st respondent.
10. A-10: True copy of order No.A/41106/R-DPC/AOI/87/EIR dt.12.5.2000.
11. A-11: True copy of representation dt.15.6.94 filed by the applicant before the 3rd respondent.

Respondents' Annexures:

1. R-1: True copy of Memorandum No.21011//3/83-Estt. (A) dt.30 Dec 1983 issued by Ministry of Home Affairs.
2. R-2: True copy of pay fixation proforma of the applicant dated 6.1.97.
3. R-3: True copy of pay fixation proforma of the applicant dated 6.1.97.
4. R-4: True copy of pay fixation proforma of the applicant dated 6.1.97.

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