

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.8/06

Thursday this the 26th day of July 2007

C O R A M :

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

V.Radhakrishnan,
S/o.late Kailath Krishnan Kaimal,
Velloor House, Manaloor,
Thrissur District – 680 617.
Retired as DASO – 1,
Naval Armament Supply Organisation.Applicant

(By Advocate Mr.N.N.Sugunapalan,Sr. & Mr.Balakrishnan Gopinath)

Versus

1. The Chief of the Naval Staff,
Naval Headquarters, South Block, New Delhi.
2. Director of Civilian Personnel,
Integrated Headquarters,
Ministry of Defence (Navy),
New Delhi – 110 011.
3. General Manager,
Naval Armament Depot,
Karanja, Mumbai.
4. General Manager,
Naval Armament Depot, Visakhapatnam.Respondents

(By Advocate Mr.S.Anilash,ACGSC)

This application having been heard on 26th July 2007 the Tribunal on the same day delivered the following :-

.2.

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

When the matter came up today, it is seen that counsel for the applicant has been represented right from the date of filing of the O.A and adjournments have been sought time and again on his behalf. Today also counsel for the applicant is not present and an adjournment is sought through a representative. We find that the applicant is not interested in pursuing the matter. The O.A is, therefore, dismissed for default.

(Dated the 26th day of July 2007)


K.B.S.RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 8/2006

TUESDAY THIS THE 20th DAY OF NOVEMBER, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

V Radhakrishnan
S/o late Kailath Krishna Kaimal
Velloor House, Manaloor
Thrissur District-680 617 ..Applicant

By Advocate Mr. Balakrishnan Gopinath

Vs.

- 1 The Chief of the Naval Staff
Naval Headquarters, South Block
New Delhi.
- 2 Director of Civilian Personnel
Integrated Headquarters
Ministry of Defence (Navy)
New Delhi-110 011
- 3 General Manager
Naval Armament Depot
Karanja Mumbai
- 5 General Manger,
Naval Armament Depot
Visakhapatnam. ..Respondents.

By Advocate Shri S. Abhilash, ACGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is a retired Deputy Armament Supply Officer (DASO-I) of the Naval Armament Supply Organisation. The applicant had worked in

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various Naval Armament Depots and is stated to have discharged his responsibilities without giving room for any adverse remarks. Consequent to implementation of recommendations of the Vth Central Pay Commission certain percentage of existing DASO-I officers were to be elevated as DASO (NFSG). In the list of candidates who had received such placement, the applicant was not included. On enquiry, he was informed that since there were adverse remarks in the ACR during 1997-98, his name was not considered. Thereafter, he was informed in September, 2002 that the adverse remarks were expunged. However, though the applicant ought to have been considered earlier for the year 2001, the list which was published in September, 2002, the same was not done nor was his case considered even thereafter. In the meanwhile, he retired from service on superannuation on 31.12.2002. At the time of drawing up Annexure A-1 list he had completed 8 years of service as DASO-I. Except the adverse remarks in 1997-98 which has admittedly been expunged later, there were no other adverse entries in the applicants ACR. Now the reason put-forward by the respondents is that the applicant was not considered as his overall performance based on the ACR's of five preceding years was below the prescribed "benchmark" and not due to any adverse remarks in the ACRs which was expunged later. Hence the applicant has filed this Original Application to quash Annexure A-6 order and for granting all benefits of placement as DASO(SFSG).

2 The respondents have filed a reply statement taking the preliminary objection of limitation stating that the cause of action in the case arose on 11.1.2002 when the panel for promotion to the grade of DASO(NFSG)

was published by the Depot excluding the applicant. Thereafter, the applicant had made a number of representations against his non promotion to the grade of DASO(NFSG) and they were duly replied to. As regards the facts, they have submitted that the Government of India introduced fifteen posts of Non-Functional Grades in the pay scale of Rs. 12000-16500 for DASO-I. The DPC constituted for assessing the placement considered sixteen officers who were eligible for the post. The applicant was one among them. The DPC recommended only 11 officers. The Committee did not recommend the case of the applicant and cases of two other officers were kept in sealed cover. Accordingly, the promotion orders were issued on 7.1.2002 (Annexure R-7). Applicant had made representation on 14.3.2002 to which a reply was furnished by the HQrs by Annexure R-2 letter dated 16.5.2002. Thereafter the applicant was repeatedly informed that he could not be promoted because the DPC had not recommended him. The reference to "adverse entries" in the ACR in the year 1997-98, made by the applicant is based on conjectures and surmises. It is true that some adverse entries were made by the Reporting Officer and Reviewing Officer in the ACR for the year 1997-98. But subsequently the adverse remarks were expunged by the Accepting Officer in August, 1998. As the adverse entries were expunged in August, 1998 itself before the DPC considered his case, they were not taken into account, but the applicant could not be promoted as he did not meet the required "Bench Mark."

3 The applicant has submitted in his rejoinder that as per the guidelines of the DOPT dated 9.10.1989 on which the respondents rely, the overall performance of the officer should be good and that at least

there should be two "Very Good" grades awarded in the last five ACRs. According to the applicant he was having "Good" gradings and he has got promotions earlier superceding his juniors by virtue of his outstanding gradings. He had always been assigned extra duties and responsibilities by higher officers and if the general performance of the applicant was poor, he would not have been entrusted with such duties by the superior officers. He has therefore prayed that the ACRs may be called for and perused by the Tribunal.

4 The respondents were directed to produce the DPC proceedings in which the decision was taken as also the ACR record of the applicant considered by the Committee from 1996-2000 which have been produced by the respondents.

5 We have carefully perused all the records produced before us and considered the pleadings. It is a fact that the applicant had been representing since May, 2002 about his non-consideration for promotion and the representations had been replied to by the respondents. It appears that the respondents while giving the reply to his earlier representation dated 16.5.2002 (Annexure R-1) had referred to communication regarding expunging of adverse remarks in his ACR which has created confusion in the mind of the applicant that he had been overlooked for promotion by the DPC since the matter regarding expunging of the remarks in the ACR was still undecided at the time of holding of the meeting. However, now the respondents have stated that the adverse remarks had been expunged in August 1998 well before the meeting of the DPC and this fact was further conveyed to the applicant in

the subsequent replies at Annexure R-3 and R-5 by the respondents. In any case we find that the applicant had been continuously agitating the matter may be on mistaken apprehension, but the respondents did not object to the admission of the O.A. On grounds of delay. They cannot raise the issue of limitation now.

6 The sum and substance of the statement of the respondents is that notwithstanding the fact that there were any adverse remarks at any point of time, the employee has to meet the requisite Benchmark to be eligible for the award of the higher grade and the applicant did not fulfill the Benchmark. Annexure R-8 OM of the DOPT dated 9th October, 1989 is stated to be governing the appointment to the DASO(NFSG). Sub para (iv) of the said guidelines prescribes Benchmark to be observed for the same and reads as under:-

(iv) The Committee should satisfy itself that the overall performance of the officer was good and that he has atleast two "Very good" gradings in the last five ACRs. Such an officer would be considered suitable for NFSG.

7 The next clause is also relevant and reads as under:

(v) There should be no adverse entries in any ACR. If there are any adverse entries, it should be clearly brought out in the minutes as to why the officer has been proposed for NFSG in spite of the adverse entry.

8 Keeping the above guidelines in view, we have gone through the minutes of the DPC convened on 1st October, 2001 to consider the grant of NFSG to DASO-I against the vacancies of the year 2000 - 2001 and the ACRs of the applicant for the period 1995-96, to 1999-2000 have

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been considered. The year-wise grades as recorded in the ACRs are as shown below:

1995-96	<i>Reporting Officer – Good</i>	<i>Modified by Reviewing Officer to “between Average and Good”</i>
1996-97	Good	
1997-98	Average with adverse remarks which were expunged by the Accepting Authority.	
1998-99	Very Good	
1999-2000	Very Good.	

9 It is seen from the Assessment sheet enclosed to the DPC minutes that the DPC did not recommend this case only because he was not without a "Very Good" report. As seen from the tabular statement given above and after perusing the original ACRs we find that this statement by the DPC is not correct as the applicant has two "Very Good" gradings in 1998-99 and 1999-2000. The adverse remark in 1997-98 had also been expunged as admitted by the respondents even before consideration of the applicant's case in the DPC. Though the grading of "Average Plus" has not been modified, commensurately, once the adverse remarks were expunged, the remarks made against the various parameters in the Report should have been taken into account by the DPC while making overall assessment of the applicant's performance. This does not appear to have been done as could be seen from the records. Besides, as stated above the only reason given by the Committee for not recommending the applicant was that he does not have two "Very Good" entries as provided for in the OM of the DOPT which fact has now been found to be incorrect. We are aware of the settled law in this regard that

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the DPC findings should not be interfered with as the Committee is empowered to assess the performance of the employee by applying its own guidelines and norms. However, in this case particularly with regard to the grant of Non-Functioning Selection Grade we have been informed that these guidelines which have been quoted supra are to govern the consideration and according to the sub para (iii), the Committee shall accept the final grading given by the Reporting, Reviewing and Accepting authorities in each ACRs unless there is any reason to deviate from the gradings. Sub para (iii) of the above guidelines is extracted below:

(iii) Ordinarily the Committee shall accept the final grading given by the Reporting/Reviewing/Accepting authority in each ACR unless there are good reasons to depart from that grading.

But the Committee is found to have not considered the matter in accordance with the above guidelines and hence interference would be in order.

10 The applicant is a retired person and had been representing his case ever since he was overlooked for promotion. Now that it is found his case has not been properly considered according to the guidelines furnished by the respondents themselves, we are of the view that justice demands that the case shall be reviewed by the DPC in the light of the observations above.

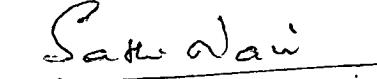
11 Accordingly, we direct the first respondent to conduct a review DPC and consider the case of the applicant strictly in accordance with the guidelines in Annexure R-8 OM of the DOPT dated 7th October, 1989 and

if the applicant is found suitable he shall be granted placement to DASO (NFSG), with all benefits including re-fixation of his pension. This exercise shall be complied within a period of three months from the date of receipt of this order. No costs.

Dated 20th November, 2007



GEORGE PARACKEN
ADMINISTRATIVE MEMBER



Sathi Nair
SATHI NAIR
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 8 of 2006

Dated the 6th November, 2008

CORAM:-

HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)

HON'BLE Dr. K.S. SUGATHAN, MEMBER (ADMINISTRATIVE)

V Radhakrishnan,
S/o late Kailath Krishna Kaimal,
Velloor House, Manaloor,
Thrissur District-680 617.

Applicant

[By Advocate: Mr MC Gopi for Mr NN Sugunapalan, Sr.
with Mr S Sujin]

-Versus-

1. The Chief of the Naval Staff,
Naval Headquarters, South Block,
New Delhi.

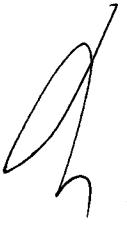
2. Director of Civilian Personnel,
Integrated Headquarters,
Ministry of Defence (Navy),
New Delhi-110 011.

3. General Manager,
Naval Armament Depot,
Karanja, Mumbai.

4. General Manager,
Naval Armament Depot,
Visakhapatnam.

Respondents.

[By Advocate : Ms Jisha for Mr. TPM Ibrahim Khan, SCGSC]


This application having been heard on 31st October, 2008 the
Tribunal delivered the following -

ORDER

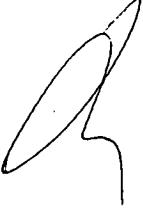
[Hon'ble Dr. KS Sugathan, M(A)]

The applicant in this OA was working as Deputy Armament Supply Officer-I (DASO-I) in the Naval Armament Supply Organisation. He superannuated on 31.12.2002. He is aggrieved by the denial of NFSG Grade to him even though his juniors were granted such NFSG by order dated 7.1.2002/11.1.2002 (A/1). The applicant made several representations against the denial of NFSG. He was given reply by the respondents that he could not be empanelled for NFSG as he did not fulfil the bench mark, and not because of the adverse remarks in his ACR of 1997-98 which have been expunged.

The applicant sought the following relief in the OA:-

- "a) To issue a writ of certiorari or any other appropriate writ, order or direction quashing Annexure-A6 communication No. CP(G)/2112/ DASO (NFSG) dated 19.08.2005 issued by the 2nd respondent;
- b) To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to give the applicant all benefits of placement as DASO (NFSG),
- c) Award the cost of this proceeding to the applicant, and
- e) Grant such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

[2] The respondents contested the OA. It is stated in the reply statement that the apprehension of the applicant that his non-selection by the DPC was on account of the adverse remarks in the ACR of 1997-98 is misplaced. The adverse remarks have already been expunged and the DPC had considered his case as if there is no adverse entry. The applicant did not meet the prescribed bench mark. The DoPT has laid down specific guidelines regarding grant of NFSG vide OM dated 9th October, 1989 (R/8).

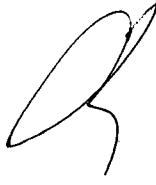


[3] This OA was allowed by this Tribunal by order dated 20th November, 2007 and the respondents were directed to conduct a Review DPC and consider the case of the applicant in accordance with the guidelines at Annexure R/8 OM of the DoPT dated 7th October, 1989 and if the applicant is found suitable he shall be granted placement in the post of Deputy Armament Supply Officer-I (NFSG) with all benefits including re-fixation of his pension. The respondents, however, filed a Review Application (RA 8/06) stating that the finding of this Tribunal was based on mistaken assumption that ACR for the year 1999-2000 was also considered by the Departmental Promotion Committee (DPC) while declaring the applicant as unfit for promotion. It was contended on behalf of the applicant in RA No. 8/08 that the DPC which met on 31st October, 2001 was for the vacancies for the year 2000-01 and the crucial date for eligibility for the year 2000-01 was 1st January 2000 as per the DoPT OM dated 17th September, 1998. It was further contended that the DPC had therefore considered the ACRs of the applicant for the period from 1994-95 to 1998-99 only and not the ACR of 1999-2000. Considering the aforesaid submissions of the ^{Review applicant} respondent Tribunal allowed the RA (RA No.8/2008) and recalled the order dated 20th November, 2007 passed in OA No.8/2006. The matter was posted for re-hearing.

[4] We have heard Mr. MC Gopi for Mr N.N. Sugunapalan, learned counsel for the applicant and Ms Jisha for Mr TPM Ibrahim Khan, SCGSC for respondents.

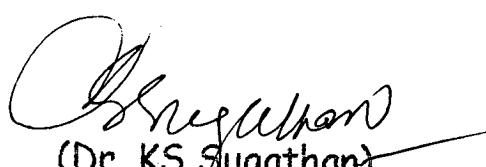
[5] During the course of hearing the counsel for the applicant besides reiterating the earlier argument has submitted that if the respondents had organized a DPC during the period 2001-02 the applicant would have been selected as he had secured 'Very good' grade in the year 1999-2000.

[6] The Tribunal therefore directed the respondents to furnish information regarding the vacancies for the year 2001-02 and whether any DPC has been held in the year 2001-02. In response to the query sought the respondents have filed an affidavit on 24th October, 2008 in which it has been confirmed that there were four carried forward vacancies ^{of} for the year 2000-01, which were available for promotion for the year 2001-02. In the statement filed by the counsel respondents on 4th September, 2008 it has also been stated that no DPC was held for the year 2001-02. However, DPC for the year 2002-03 was held by which time the applicant had retired from service. We have called for the DPC proceeding and ACRs of the applicant and perused the same. It is seen from the DPC proceeding dated 31st October, 2001 that the applicant was declared unfit as he did not have any 'very good' grading. It is however seen that even if we consider the ACRs for the period 1994-95 to 1998-99, the applicant had one 'very good' for the year 1998-99. Whereas according to the Bench mark envisaged in the guideline contained in DoPT OM dated 9.10.89 and relied on by the respondents there should be two 'Very good' during the last five years. In any case as the applicant did not meet the bench marks at least two Very Good, the respondents cannot be faulted for not declaring him fit for promotion in the DPC held on 31st October, 2001. However, there is merit in the contention of the counsel for the applicant that the applicant ought to have been considered for the vacancies that arose in the subsequent year 2001-02 including the vacancies that were carried forward. The applicant superannuated on 31st December 2002. It is seen from the OM dated 13.10.1998(R/10) issued by the DoPT that DPCs are required to be held at regular intervals. The said OM has also suggested a Model Calendar for organizing DPCs. According to this Model Calendar in respect of cases that do not require approval of Appointments Committee of the Cabinet (ACC) the DPC for the vacancies of the year 2000-01 should have been held before January 2000. Following the same pattern, the DPC for vacancies for the year 2001-02 should have been held

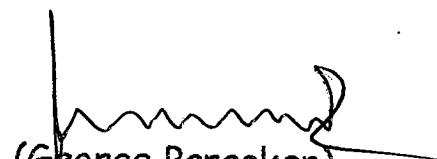


before January 2001. As per the information provided by the respondents four carry forward vacancies were available for the year 2001-02. The DPC for those vacancies was due by January 2001, but it was not held in the year 2001 or in the year 2002, not till the applicant retired on 31.12.2002. Failure of the respondents to hold the DPC for the vacancies of 2001-02 resulted in depriving the applicant's right for consideration for the NFSG before his retirement. We are, therefore, of the considered opinion that there is miscarriage of justice in this case. The ends of justice would be met in this case if the respondents are directed to consider the applicant for promotion to the NFSG for the vacancies of the year 2001-02 including the carry forward vacancies by holding a Special DPC for the purpose and assessing his eligibility with reference to the ACRs for the period 1995-96 to 1999-2000.

[7] For the reasons sated above, the OA is disposed of with a direction to the Respondents to consider the applicant for promotion to NFSG against the vacancies of 2001-02 including the carry forward vacancies by organizing a Special DPC and assess his fitness with reference to the ACRs of 1995-96 to 1999-2000 and if found fit extend consequential benefits with effect from the date the DPC for 2001-02 was due (i.e. January 2001) or the date on which his juniors were promoted, whichever is later. The above exercise shall be done within a period of three months from the date of receipt of copy of this order. No costs.



(Dr. KS Sugathan)
Member (Administrative)



(George Paracken)
Member (Judicial)

Stn