

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 81 of 2010

Friday, this the 26th day of August, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

N. Sreekumar, aged 46 years, S/o. (late) K. Narayanan Nair,
 Administrative Officer Gr. I, Headquarters Southern Naval
 Command, Naval Base, Cochin-682 004, Residing at :
 P.4/5, "Vikram Flats", Panampilly Nagar,
 Cochin-682 036.

Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the Secretary
 to the Government of India, Ministry of Defence,
 South Block, New Delhi – 110 011.
2. The Chief of the Naval Staff Integrated Headquarters
 of Ministry of Defence (Navy), Sena Bhawan,
 New Delhi – 110 011.
3. The Flag Officer Commanding-in-Chief,
 Headquarters Southern Naval Command,
 Naval Base, Cochin-682 004.
4. Union Public Service Commission, represented
 by its Secretary, Dholpur House, Shahjahan Road,
 New Delhi – 110 011.

Respondents

**[By Advocates – Mr. Sunil Jacob Jose, SCGSC (R1-3) &
 Mr. Thomas Mathew Nellimootil (R4)]**

This application having been heard on 26.08.2011, the Tribunal on the
 same day delivered the following:

[Signature]

ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

We have heard the learned counsel appearing for the applicant Mr. T.C. Govindaswamy, Mr. Sunil Jacob Jose, SCGSC appearing on behalf of respondents 1-3 and Mr. Thomas Mathew Nellimoottil appearing on behalf of respondent No. 4.

2. The applicant is presently working as an Administrative Officer Grade-I in the pay band of Rs. 9300-34800/- with grade pay of Rs. 5400/- under the 3rd respondent. His next promotion post is that of Senior Administrative Officer (in short SAO). Till 21st April, 2005 the promotion to the SAO was governed by the then existing rules. A new rule Annexure A-2 comes into force only on 21.4.2005. As per the then existing rules prior to Annexure A-2 came into force (i) the Administrative Officer Grade-I with three years service in the respective grade after appointment thereto on a regular basis failing which (ii) six years of service in the grade of Administrative Officer Grade-I and Administrative Officer Grade-II combined together rendered after appointment thereto on a regular basis failing both (i) & (ii) Administrative Officer grade with six years service in the grade rendered after appointment thereto on a regular basis, are the eligibility criteria for promotion to SAO. The applicant did not have the requisite number of years of service either as Grade-I or combined service as the case may be as on 1st January, 2003. Therefore, he was not found entitled for promotion to SAO. However, his case is that the vacancy for the year 2004-05 were not filled up and if it were to be filled up the applicant had the requisite number of years of experience as per the then existing

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rules for promotion to the post of SAO. According to the respondents the DPC met only after the new recruitment rules came into force as per which the eligibility criteria was changed. As a result as per Annexure A-2 an officer with six years in Administrative Officer Grade-I alone is entitled to be considered for promotion to SAO. Undisputedly the applicant did not satisfy this qualification for being considered for the vacancy arising in 2005-06. But for the vacancy if any, in 2004-05 if the DPC had met applicant had a fair chance of being considered and promoted to the post of SAO as by then namely as on 1st January, 2004 he had already completed the requisite years of six years combined service both in Grade-I and Grade-II together. Since he has not been considered for promotion to the vacancy arising in 2004-05 he has approached this Tribunal by filing this present OA seeking appropriate relief.

3. The UPSC i.e. respondent No. 4 is the DPC for considering the cases of promotion to the SAO. They have filed a reply statement wherein it is admitted that no proposal for DPC for the year 2004-05 and 2005-06 were received by them from the Ministry of Defence. According to them the applicant did not have the requisite qualification for the year 2003-04 of which there is no dispute. Therefore, the non-consideration of the case of the applicant for any vacancy in the year 2004-05 is because of the fact that the Ministry of Defence did not send any proposal to fill up the vacancy if any arising during the year 2004-05.

4. In the reply statement filed by the respondents Nos. 1-3 they refer to

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the then existing rule prior to Annexure A-2 in paragraph 3 of the reply statement and admits the fact that the combined service of six years in Grade-II and Grade-I make a candidate eligible for promotion to the post of SAO. They reiterated that applicant did not acquire the necessary experience as on 1.1.2003 for considering in 2003. But whether the applicant had completed the requisite experience as on 1.1.2004 on which aspect the reply is silent. They have also no case that there was no vacancy for the year 2004-05 with the qualification determined as on 1.1.2004. It is specifically urged by the applicant in Paragraph 4(f) of the OA that vacancy for the period from 1.4.2004 up to the date of publication of the Annexure A-2 in the official gazette should have been filled up under the pre-revised rules. However, this was not done and in the meanwhile the applicant was working at Vishakpatnam at the material time was transferred and posted to one retirement vacancy left by one SAO. The applicant has been holding the post ever since discharging all the duties and functions attached to the post of SAO in the pre-revised scale of pay of Rs. 10,000-15,200/- present pay band Rs. 15,600-39,100/- with grade pay of Rs. 6,600/-. The answer to this paragraph is contained in paragraph 9 of the reply statement filed by the respondents 1-3 which is in the following lines:-

“With regard to 4(f), it is submitted that the applicant had not rendered requisite qualifying service as AO I having been appointed to the post with effect from 24th April, 2003. Hence the applicant is not eligible for promotion with retrospective effect.”

5. Thus, they have conveniently omitted to reply the specific contention of the applicant that vacancy for the year 2004-05 to which the applicant is

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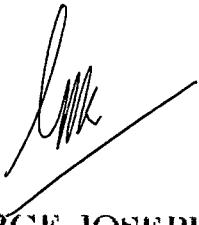
entitled to be considered as he had the requisite experience is not denied by respondents 1-3. If as a matter of fact there were no vacancies for the year 2004-05 nothing prevented the respondents 1-3 from being stating so. If the applicant was not qualified for the year 2004-05 also nothing prevented the respondents from stating so. On the other hand when there is a specific plea raised by the applicant as we have noticed in paragraph 4(f) of the pleading only a evasive answer is given in the reply statement. Impliedly, it is an admission by not denying the specific allegations made in paragraph 4(f). As regards the reply of the UPSC is concerned they could have considered the matter for promotion to the vacancy arising in 2004-05, if only proposal were made from the Ministry of Defence.

6. We find that the failure on the part of the respondents 1-3 to send the proposal for filling up the post of SAO, arising in the year 2004-05 has detrimentally affected the right of the applicant for his consideration to the post of SAO and thus violated Article 16(1) of the Constitution of India. It is stated by the applicant that he had been considered and given promotion in the year 2010-11 as per the Annexure A-2 rules now in force. Since the question as to whether he is entitled to be considered for promotion to the vacancy arising in the year 2004-05 which alone is relevant for the purpose of considering the case on hand and having found that no proposal had been sent to the appropriate authority by the Ministry of Defence, it is only appropriate that the applicant's case ought to have been considered with the then existing rules prior to Annexure A-2 as against the vacancy arose for the year 2004-05 and if it is found that he is entitled for promotion then

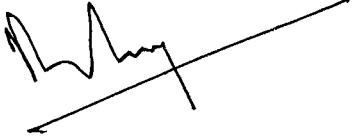


what is required is to antedate his promotion as against the vacancy for the year 2004-05.

7. In the result we allow this OA and direct the respondents 1-3 to send the necessary proposal for filling up the vacancy which arose in the year 2004-05 to the respondent No. 4 within a period of two months and consequently on receipt of the same the respondent No. 4 i.e. the UPSC shall convene a DPC and consider the eligible candidates for promotion. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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