

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 10 of 2011

Thursday, this the 23rd day of February, 2012

CORAM:

HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

V Nakan, Technical Assistant (Weapon)
Naval Ship Repair Yard
Naval Base, Kochi – 682 004

... Applicant

[By Advocate Mr. Johnson Gomez]

versus

1. Union of India represented by its
Secretary, Government of India,
Ministry of Defence, New Delhi
2. The Chief of Naval Staff,
Integrated Headquarters (for DCP),
Ministry of Defence (Navy),
Room No.101, D-11 Wing,
Sena Bhavan, New Delhi – 110 011
3. The Flag Officer Commanding in Chief,
Head Quarters, Southern Naval Command,
Kochi – 682 004
4. The Commodore Superintendent,
Naval Ship Repair Yard
Naval Base, Kochi – 682 004
5. J.V Koyande, Tech.Asst.(Ele),
Controller Technical Services (Tech Cell),
Material Organisation, Naval Store Depot,
Gadkopar, Mumbai – 400 086
6. B Sardar, Technical Assistant,
Ship Buildings Centre,
Naval Base, Vishakapatnam,
Near Naval Dockyard,
Vishakapatnam – 530 014.

7. B.Narayana Rao,
Technical Assistant (Engineering),
Ship Buildings Centre, Naval Base,
Vishakapattanam, Near Naval Dockyard,
Vishakapattanam – 530 014.
8. S.P. Vilankar,
Technical Assistant (Engineering),
Naval Dockyard, Mumbai : 400 001
9. N. Alagar Rajan,
Technical Assistant (Engineering),
Naval Dockyard,
Vishakapattanam – 530 014.
10. K.K. Sharma,
Technical Assistant (Engineering),
Material Organisation (Mumbai),
Naval Store Depot, Gatkoopar,
Mumbai – 400 086
11. P. Rajanikanth,
Technical Assistant (Engineering),
Ship Buildings Centre, Naval Base,
Vishakapattanam, Near Naval Dockyard,
Vishakapattanam – 530 014.
12. P. Tripathi,
Technical Assistant (Engineering),
Ship Buildings Centre, Naval Base,
Vishakapattanam, Near Naval Dockyard,
Vishakapattanam – 530 014.
13. Surana Dinesh,
Technical Assistant (Engineering),
Naval Ship Repair Yard, Karwar,
Karnataka. ... Respondents

[By Advocate Mr.Sunil Jacob Jose, SCGSC for R1-4]

This application having been heard on 07.02.2012, the Tribunal on
23-02-12 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

This O.A has been filed by the applicant for the following reliefs:



- (i) To declare that the applicant is senior to the fifth respondent in the cadre of Technical Assistant and that he is eligible to be placed at Sl.No. 39 in Annexure A5, above the 5th respondent;
- (ii) To direct the 2nd respondent to rectify the discrepancy in the Annexure A5 seniority list by placing the applicant at Sl. No. 39 in Annexure A-5, in the place above the fifth respondent;
- (iii) To direct the second respondent to consider the applicant also for promotion to the post of Junior Technical Officer and to include him in Annexure A-6 panel, in accordance with Annexure A7 recruitment rules and to promote the applicant to the post of Junior Technical Officer, above the fifth respondent;
- (iv) To direct the second respondent to consider Annexure A8 to A11 in accordance with law and to pass appropriate orders thereon, expeditiously and within a time frame that this Hon'ble Court may consider reasonable;
- (v) To declare that the principle for determining inter se seniority in the grade of Technical Assistant between various disciplines, in the order of disciplines as contained in the recruitment rules, as mentioned in paragraph No.4 of Annexure A15 is illegal and arbitrary.
- (vi) To call for the records leading to Annexure A13 and to quash the same.

2. To state the facts in brief, the Technical Assistant Group-B (Gazetted) is a civilian cadre in the Indian Navy with six disciplines, namely Technical Assistant (Engineering/Electrical/Construction/Weapon/PP&C/ Work and Maintenance) to which eligible Foremen are promoted. A combined seniority list of Technical Assistant in different streams for the first time was circulated on 04.12.2002 and thereafter on 17.05.2005, 09.01.2007, 10.03.2008 and 06.01.2010. A Technical Assistant with 2 years regular service is eligible for consideration for promotion to the post of Junior Technical Officer Group-A (Gazetted) on the principle of selection-cum-



seniority. When the seniority list of Technical Assistant was published in 2008 and 2010, the applicant had made representations in time for rectifying discrepancies noticed by him. His request for revision of seniority was rejected vide order dated 28.12.2010 (Annexure A-13) based on Para 4 of Annexure A-15 dated 06.01.2010. Aggrieved, the instant O.A. has been filed by the applicant.

3. The contention of the applicant is that he is eligible to be considered for promotion to the post of Junior Technical Officer (JTO) in place of the 5th respondent and is eligible to be included at serial No. 18 in Annexure A-6 instead of the 5th respondent as he is senior to the 5th respondent, as he was appointed on 01.06.2007 as Technical Assistant while the latter was appointed on 28.06.2007. Further, in the feeder cadre of Senior Foreman, the applicant was appointed on 18.09.1995 while the 5th respondent was appointed on 21.11.2000. The incumbents at serial Nos. 40 to 51 in Annexure A-5 seniority list as on 01.12.2009 are juniors to the applicant. While the juniors to the applicant were being considered for promotion to the post of JTO, he was not being considered due to the discrepancy in the seniority list. According to him, the criteria for determining inter se seniority amongst different disciplines is arbitrary. There is no provision in the Recruitment Rules of Technical Assistant which provides for determining inter se seniority amongst different disciplines. Even though the relative order of disciplines mentioned in the Recruitment Rules of Technical Assistant is Engineering/Electrical/ Construction/Weapons/PP&C/Works & Maintenance, the same order is not followed in Annexure A5 seniority list. The serial Nos. 39 to 41 in the seniority list are from the Electrical discipline, from 41 to 51 are

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from the Engineering discipline, serial Nos. 52 and 53 are from the Weapon discipline, serial Nos. 54 to 57 are from the PP&C discipline and serial Nos. 58 to 64 are from the Construction discipline. The principle stated to have been followed in Annexures A-13 and A-15 is actually not followed in Annexure A-5. **In Class-II Direct Recruitment Engineering Officers Association vs. State of Maharashtra, 1990 (2) SCC 715**, the Apex Court has held that once an incumbent is appointed to a post according to the rules, his seniority has to be counted from the date of his appointment. As no rule is formulated for determining inter se seniority amongst different disciplines, the only possible method for determining inter se seniority amongst different disciplines is the order of their initial appointment as Technical Assistant. When 2 incumbents are appointed as Technical Assistant on the same day, their inter se seniority has to be determined in accordance with the seniority enjoyed by the incumbent in the feeder category. As per O.M. No. 9/11/55-RPS dated 22.12.1959, where promotions are made on the basis of selection by a DPC, the seniority of such promotees shall be in the order in which they are recommended for promotion by the Committee. When promotions are made on the principle of seniority subject to rejection of the unfit, the seniority of persons considered fit for promotion at the same time, shall be the same as the relative seniority in the lower grade from which they are promoted.

4. The respondents contested the O.A on the following grounds. The applicant did not make any representation when the seniority lists of Technical Assistants were circulated on 10.03.2008, after his promotion to the grade of Technical Assistant (Weapon) on 01.06.2007. It is a settled law that the seniority once accepted is not subject to dispute at later date. The



Departmental Promotion Committee (DPC) meetings for the post of JTO for the years 2008-09, 2009-10 and 2010-11 were held on the basis of /the seniority lists circulated on 10.03.2008 and 06.01.2010. Any modification of the list at this stage is not warranted by law. Since the DPC meetings in different disciplines of Technical Assistant were held on the same day and candidates in one panel have to be bunched together, any one stream had to be placed first followed by others. The Engineering discipline was placed first followed by Electrical, Engineering/Construction, Weapon, PP&C and Works & Maintenance. If the rationale given by the applicant is to be followed, it would create administrative bottlenecks in holding DPC meetings for promotion. Annexure A-8 representation made by the applicant was duly replied vide letter dated 28.12.2010. Even assuming hypothetically that the applicant is placed at Serial No.39 above the 5th respondent, he would come in the zone of consideration but not necessarily get promoted since the vacancies for the year 2011-12 are only 07. His promotion is only a remote possibility.

5. We have heard Mr. Johnson Gomez, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC, appearing for the respondents 1 to 4 and perused the records.

6. The cadre of Technical Assistant has 6 feeder cadres. The respondents have prepared a combined seniority list of Technical Assistants by bunching together the panel of selected candidates feeder cadre-wise. Because any one stream had to be placed first followed by others, they say that they have put the Engineering discipline first followed by the Electrical,

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Engineering/ Construction, Weapon, PP&C and Works & Maintenance, but actually they have not followed it in Annexure A-5 seniority list. Unfortunately, the method of preparing seniority of Technical Assistant in different streams adopted by the respondents has no backing of law. The O.M. No. 9/11/55-RPS dated 22.12.1959 of the Government of India, Ministry of Home Affairs, provides general principles for determining seniority of various categories of persons employed in Central Services. The relevant paras from the above O.M. are reproduced as under:

"5. Promotees:

(i) The relative seniority of persons promoted to the various grades shall be determined in the order of their selection for such promotion:

Provide that where persons promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their promotion, seniority shall follow the order of confirmation and not the original order of merit.

(ii) Where promotions to a grade are made from more than one grade, the eligible persons shall be arranged in separate lists in the order of their relative seniority in their respective grades. Hereafter, the Departmental Promotion Committee shall select persons for promotion from each list upto the prescribed quota and arranged all the candidates selected from different lists in a consolidated order of merit which will determine the seniority of the persons on promotion to the higher grade. xxxxxx xxxx xxxxxx"

Explanatory memorandum:

General Principle 5(i) : Where promotions are made on the basis of selection by a D.P.C., the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where the promotions are made on the basis of seniority subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior, such persons shall not if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him."

(emphasis supplied)



The relative seniority in the lower grade and a consolidated order of merit which would determine the seniority of the persons on promotion to the higher grade are points to be noted.

7. In **Class-II Direct Recruitment Engineering Officers Association vs. State of Maharashtra**, 1990 (2) SCC 715, the Apex Court has held, "once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of confirmation".

8. Again in **Pawan Pratap Singh and Others vs. Reevan Singh and Others**, 2011 KHC 4122, the Apex Court held, " Inter se seniority in a particular service has to be determined as per the service rules.. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from the different sources.. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

9. The above judgements would show that in service jurisprudence the date of appointment is considered as the crucial factor for determining seniority. In the absence of any rule to determine inter se seniority among different disciplines, the right and proper course of action for the respondents is to prepare the seniority list of Technical Assistants (TAs) on the basis of the date of appointment as TAs; when there are two or more incumbents with

the same date of appointment, inter se seniority must be based on the seniority in the feeder cadre; when there are two or more incumbents with same seniority in the feeder cadre, inter se seniority must be on the seniority in age. From an integrated seniority list of TAs so made, promotion to the post of JTO can be made on the principle of selection-cum-seniority, satisfying the requirements of Articles 14 and 16 of the Constitution.

10. After the applicant was promoted to the grade of TA on 01.06.2007, the seniority list of TAs were circulated on 10.03.2008 and 06.01.2010. The applicant had represented against the seniority list on 05.04.2008 (Annexure A-17) and on 10.02.2010 (Annexure A-8) and vide Annexures A-9 and A-10 dated 17.05.2010 and 04.10.2010 respectively. This would show that the applicant had not accepted the seniority fixed for him by the respondents. It is also not the case of the respondents that his representations were not in time. The relevant part from the reply of the respondents to the representation of the applicant at Annexure A-8 is extracted as under:

“.. The broad principle followed for determining the inter-se seniority amongst different disciplines is their relative order in the Recruitment Rules...”

This practice, though in vogue since 2002 and not challenged till now, is not tenable in the light of settled law and instructions of the Government of India referred to earlier.

11. The contention that if the rationale given by the applicant is followed, it would create administrative bottlenecks for the respondents in holding DPC meetings for promotion is unacceptable for the reason that the total number of the TAs is not too large or unwieldy.

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12. The assumption of the respondents that even if the applicant is included in the zone of consideration accepting his request for seniority, his promotion is only a remote possibility is highly erroneous. The right of the applicant for consideration for promotion should be respected, it cannot be discarded lightly, vitiating the process of selection.

13. On the basis of the seniority lists of TAs already circulated, promotions to the post of JTO have been made in the past. Those who have acquiesced in, have no right to demand modification, that would unsettle settled seniority. Seniority is generally taken as settled, if not modified within four years of its circulation. The seniority lists of TAs circulated on 10.03.2008 and 06.01.2010 have been challenged by filing the instant O.A on 04.01.2011 which is not late. Those TAs who were promoted in June, July and August, 2007 and are in service and listed above the applicant in the seniority lists have been impleaded in this O.A, but by not entering appearance, they have relinquished their right to defend. Other TAs who are seniors to the applicant cannot now challenge the seniority list as they have acquiesced to and their seniority has been settled too long to unsettle now.

14. In the light of the above discussion, the O.A. succeeds. Relief to the applicant is moulded as under. We declare that based on the date of appointment as T.A, the applicant is senior to the 5th respondent in the cadre of T.A. and that he is entitled to be placed at Sl. No. 39 in Annexure A-5 above him and at Sl. No. 18 in Annexure A-6 panel displacing him. However, settled seniority of TAs above Sl. No. 39 and promotions made in the past to

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the post of JTO based on the seniority list circulated earlier need not be unsettled on the principle that long settled seniority should not be disturbed. The second respondent is directed to consider the applicant also for promotion to the post of JTO and to promote him, if found fit, to the post of JTO kept vacant as per interim order dated 06.01.2011. The seniority list of TAs appointed in 2008 and thereafter should be recast as per law, following due procedure. Appropriate orders in regard to the applicant should be issued within a period of two months from the date of receipt of a copy of this order.

15. No order as to costs.

(Dated, the 23rd February, 2012)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE PR RAMAN
JUDICIAL MEMBER

cvr.