

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 12/2004

WEDNESDAY, THIS THE THIRD DAY OF AUGUST, 2005

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER**

**K.J. Varghese S/o late K.V. John
Assistant Engineer ((Retd)
Kallarimalil House
Block Road, Mulanthuruthy P.O.
Ernakulam District-682 314.**

Applicant's

By Advocate Mr. K.P. Dandapani

Vs.

1. Union of India represented by its Secretary
Ministry of Defence, South Block
New Delhi.-110011
2. The Engineer-in-Chief
Army Headquarters
DHQ Project Office
New Delhi-110011
3. The Chief Engineer
Cantonment Command,
Pune-411 001.
4. The Engineer-in-Chief Branch (Records)
(Officers) EIR(O)
Army Headquarters, DHQ PO
New Delhi-110 011
5. The Chief Record Officer
Central Record Officer
C/o Chief Engineer Delhi Zone,
Delhi Cantonment-110 010
6. The Chief Engineer (Navy)Kochi
Naval Base P.O.
Kochi-682 0045.

..... Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

**The Application having been heard on 8.7.2005 the Tribunal delivered the following on
3.8.2005**

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The Applicant, an Assistant Surveyor of Works (ASW for short) retired from the office of the respondents on 30.6.2000, is aggrieved by his non-consideration for promotion to the post of Assistant Surveyor and Surveyor of Works (ASW and SW) though he was included in the panel. The applicant had entered in service under the respondents in 1963 as a Survey Assistant Grade-II and had been promoted as Assistant Engineer in 1985. The next promotion posts were Assistant Surveyor of Works and Surveyor of Works respectively. The applicant has passed the Direct Final Examination of Institution of Surveyors (India) in 'Building and Quantity Surveying' which is a pre-requisite qualification for promotion as ASW. Despite a number of vacancies in the year 1991to 1994 no action has been taken to fill up the vacancies and many employees had approached various Tribunals and on the basis of the directions of the Tribunals a panel was drawn on 11.2.2003 (Annexure A1). The applicant's name finds place in this panel at Sl. No. 22. It is contended by the applicant that one of his junior at Sl. No. 88 Shri T.K. Reghunathan had filed O.A. 802/2001 and was given promotion as ASW and later as SW as per the direction of this Tribunal with the monetary benefits and in the case of one Subhash Chandra Gulati his name figures at Sl. No. 182 promotion was given as ASW and his pay was fixed w.e.f.2.10.2003 the date by which he had been promoted. It is further stated that the ACP scheme was introduced for Central Government Employees from 1999 and since the applicant has completed 24 years of service in 1999 the benefit should have been given to the applicant. Though he made several representations in 2002 and 2003 the respondents have not taken any action and by A-6 letter he was

informed that his name was included in the list for financial upgradation under ACP and that was being forwarded to MOD for holding Screening Committee Meeting, Thereafter no orders have been communicated. The applicant has therefore prayed for notional promotion to the higher posts to which he has become eligible and to the benefit of pay fixation and to all consequential benefits in pension and other retirement dues.

2. The respondents in their reply statement admitted that though the name of the applicant was included in the panel for promotion along with other eligible Surveyor Assistants Grade-I after being considered by the Review DPC which is conducted as per Court directions in a batch of OAs filed by a number of Surveyor Assistants Grade-I. However, they contended that the applicant could not be promoted physically since he has retired from service on 30.6.2000 whereas the panel was issued on 11.2.2003. They further stated that the case of Shri T.K. Raghunathan referred to by the applicant is different as he is due for superannuation only on 31.5.2016 and therefore he has been promoted from his actual date of assumption of charge. In the case of Shri S.C. Gulati who retired on 31.3.2003, his promotion was given w.e.f. 23.6.2001 when the juniormost individual in the panel at SI.NO. 220 was promoted. The orders referred to in Annexure A2 by the applicant has since been cancelled and the promotion of Shri Gulati is also effected from his actual date of assumption of duties as ASW i.e. February/March, 2003 and the benefit of pay fixation has been given accordingly. According to the respondents the applicant cannot be granted notional seniority over his seniors and no such notional seniority has been extended to any one including Shri S.C. Gulati. It is also argued that prospects of promotion are not a constitutional right of service as promotion depend upon suitability and other factors.

3. In the rejoinder filed the applicant contended that the respondents are silent on the claim of the applicant on rejection of financial upgradation under the ACP scheme since the scheme was introduced in 1999 and he had retired only on

30.6.2000. If the ACP scheme is made applicable to him w.e.f. 9.8.1999 he would have got the first and second financial upgradation together as he had already completed 24 years as on 9.8.1999. The applicant was unable to perform the duties of ASW and SW due to reasons not attributable to him as the Department did not promote him at the relevant time and his legitimate rights cannot be denied to him.

4. The learned counsel for the applicant relied on the decision of Hon'ble Supreme Court in M.G. Badappanavar and another Vs. State of Karnataka and others (AIR 2001 SC 260) in which the Apex Court while granting notional promotions to the general candidates reserving the claim of reserved candidates ordered that they will get notional promotion but will not be entitled to any arrears of salary on the promotional posts and for purposes of retiral benefits, their position in the promoted posts from the notional dates will be taken into account and retiral benefits will be computed as if they were promoted to the posts and drawn the salary and emoluments of those posts from the notional dates. The learned counsel for the applicant argued that on the same lines retiral benefits may be allowed to the applicant also.

5. We have considered the pleadings and the judgment referred to and perused the records. It is an admitted fact that the vacancies which occurred in the respondents' office from 1991 to 1994 were subject matter of ^{Li}gation in a batch of OAs in the Tribunal and based on the direction of the Court the panel in Annexure A1 was issued. The heading of the panel and the list of names included in the Appendix 'A' clearly indicate that the panel was prepared against the vacancies of 1992-93 and 1993-94. It is therefore ~~be~~ reasonable to presume that the review DPC would have considered the vacancies which existed in these years and the number of persons included in the panel would be corresponding to the number of vacancies. It is evident that many retired persons have been included obviously due to the reasons that the panel was prepared in a subsequent date after lapse of so many years. The main objective would have been to give due consideration to those who

had become eligible as on that date and could not have actually been promoted due to administrative delays which have taken place. Therefore the respondents cannot argue that once the panel has been prepared no further action was necessary to implement the panel. It appears that the respondents have followed the policy of only implementing the promotions of those who were about to retire ignoring the claim of others. The applicant has pointed out the specific case of Shri T.K. Reghunathan who is at SI. No. 88 and has been promoted even though he is going to retire only in 2016. In the case of the last person in the panel at SI. No. 220 he has been given given promotion w.e.f. 23.6.2001. It appears that the respondents are picking and choosing individual cases without taking a holistic view of the matter in the light of the directions of the Tribunal extending the benefit of promotion to those who have been deprived unjustly of the same. It is incumbent upon the respondents to adjust the employees in the panel in accordance with the dates of occurrence of vacancies in the order granted to them in the panel and to extend notional promotions to the next level in the hierarchy in accordance with the notional dates arrived at. This exercise will have to be undertaken for all the names included in the panel and without doing this it is not open to the respondents to state that none of the seniors of the applicant has been given any notional promotion and thereby to deny the same to the applicant.

6. The respondents are strangely silent in the reply statement on the claim of the applicant for the benefits under the ACP Scheme though by A6 they had informed him that his case is under consideration of the Ministry of Defence. Though the applicant has claimed both the reliefs of promotion as well as the benefit of ACP Scheme it has to be clearly mentioned here that both the claims cannot go together. The ACP Scheme is intended to be a safety net and a substitute for promotions in order to mitigate the hardship caused to the employees by delayed promotions. Therefore the applicant can get only either of the benefits. If he gets the benefit of promotion he cannot be considered under ACP Scheme. It is stated that

further promotions of the applicant are to the post of ASW and the next hierachial grade is to the post of Surveyor in the scale of 10000-15200/- According to the applicant if the ACP scheme is made applicable from 9.8.1999 he will get the next grade of upgradation in the scale of ASW and SW together as he has already completed 24 years on that date under the normal rules. Since the applicant was included in the panel of 1993-94 he will be eligible for promotion to ASW in 1993 and as Surveyor of Works on 1.10.1997 or from the date of occurrence of the next vacancy to be determined by the respondents. Although he has been considered by the respondents for empanelling, notional dates of promotion have to be fixed according to the arising of vacancies and after adjustment of the persons who are included in the panel of 1992-93 and those above him in the panel for 1993-94. While upholding his rights to be considered for notional promotion on the basis of the consideration by the review DPC in the panel for 1993-94 to the grade of Assistant Surveyor of Works, we are however not in a position to indicate any specific dates as prayed for by the applicant for his promotion to ASW and SW as this will depend upon the aforementioned exercise being considered by the respondents. We also make it clear that the applicant is not entitled for both the benefits - the normal promotions and the ACP scheme. In the normal course since the panel has been prepared as per the directions of the Tribunal it is incumbent upon the respondents to consider him for promotion. Any consideration of his case under ACP scheme on an alternate basis would depend upon the option of the applicant if he gives his willingness for the same. Following the ratio of the judgment in AIR 2001 SC 260 relied upon by the applicant we also consider that the applicant will be entitled to only notional promotion but not to any arrears of pay. However, the notional promotion will be effective for the purpose of retiral benefits which would be computed on the basis of the salary that would have been drawn by the applicant on notional basis. Accordingly the following directions are given:

- (i) The respondents shall promote the applicant as ASW as per the

approved panel of 1993-94 in Annexure A1 w.e.f a date to be finalised in accordance with the number of vacancies on a notional basis and thereafter considering his notional service in the post his promotion as Surveyor of Works will also be considered as per the Recruitment Rules in the scale of Rs. 10000-15200 and the pay fixation shall be done as per the notional date.

(ii) The pension and other terminal benefits shall be determined in accordance with the pay fixed as ordered above.

7. The O.A is allowed as indicated above with no order as to costs.

Dated the 3rd August, 2005.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



Sathi Nair
SATHI NAIR
VICE CHAIRMAN

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