

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 119 of 2009

Thursday, this the 25th day of March, 2010

C O R A M

**HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

P. Chandrasekharan Nair, Driver Grade-II,
Jawahar Navodaya Vidyalaya, Pathanamthitta.

Applicant

(By Advocate – Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. The Deputy Commissioner,
Navodaya Vidyalaya Samithi,
Secunderabad – 500 003.
2. The Commissioner, Navodaya
Vidyalaya Samithi, New Delhi.

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Respondents

[By Advocate – Mr. Nishil for M/s. M.K. Damodaran & Associates (R1)]

This application having been heard on 16.3.2010, the Tribunal on
25.03.10 delivered the following:

OR D E R

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

This O.A. has been filed by the applicant with the prayer for a direction to the respondents to give him promotion as Driver Grade-II on completion of 9 years of regular service in the ordinary grade, as granted to similarly situated persons.

2. To state the facts of the case briefly, the applicant was granted promotion as Driver Grade-II in the pay scale of Rs. 4000-6000 by order dated 2.1.2002 after a

trade test on 15.12.2001 at Jawahar Navodaya Vidyalaya, Chittoor. The promotion was effective from the date of assuming the charge of Driver Grade-II. His juniors who qualified in the trade test held on 26.12.2005 were granted promotion to Driver Grade-II with effect from the date they completed 9 years regular service in the ordinary grade. As a result, they were getting higher pay than the applicant. He made a representation on 14.05.2007 for granting him effective date of promotion on completion of 9 years of regular service in the ordinary grade, as was granted to the similarly placed persons. Three more representations were made subsequently. Vide order dated 22.10.2007 the respondents intimated the applicant that his case had been taken up with Navodaya Vidyalaya Samiti Headquarters, New Delhi. There was no further development. Hence the O.A.

3. The applicant submits that it is illegal, arbitrary and discriminatory not to grant him the effective date of promotion on completion of 9 years of service as Driver in the ordinary grade, as granted to similarly placed persons, who are juniors to him. The applicant passed the trade test and was promoted on 02.01.2002. However, by granting promotion on completion of 9 years service to his juniors without extending the same benefit to him has resulted in their getting higher pay. It is only just and fair that the applicant also is given promotion with effect from the date he completed 9 years as a Driver in the ordinary grade.

4. The respondent contested the OA. In their reply, they took the stand that they had sought a clarification from the Headquarters which is not yet given. The clarification at Annexure R1(C) dated 10.02.2005, which permitted placement of drivers in Grade-II on completion of 9 years of regular service in the ordinary grade will have only prospective effect. Therefore, the applicant is not entitled to the benefit of this clarification but his juniors are.

5. Arguments were heard and documents perused.

6. The relevant extract from order dated 28.10.1999 introducing promotional scheme for Vidyalaya cadre Drivers of Navodaya Vidyalaya Samiti is extracted as under :

"In continuation to the Samiti's notification No. 1-6/94-NVS(Admn.) dated 2.8.99 on the above subject, I am directed to convey the approval of the competent authority for distributing the existing posts of Drivers in the following three grades in the ration 55:25::20, viz. Ordinary Grade, Grade-II and Grade-I :

<u>Grades & Nomenclature</u>	<u>Pay Scales attached to the posts</u>	<u>No. of posts as on 1.4.99</u>	<u>Eligibility</u>
Driver (Ordinary Grade)	3050-75-3950-80-4590	188	At initial stage as per per the provisions of recruitment rules.
Driver (Grade II)	4000-100-6000	86	After rendering Nine (9) year regular service in ordinary grade.
Driver (Grade I)	4500-125-7000	69	After rendering 6 (six years regular service in Grade II or combined regular service of 15 years in Grade II and in Ordinary Grade put together"

7. The applicant was promoted as Driver Grade-II on 02.01.2002 under the above promotional scheme. The applicant's juniors were promoted under the very same promotional scheme on 21.04.2006. Although the applicant and his juniors were promoted under the same promotional scheme on different dates, they were treated differently in respect of the effective date of promotion. While the applicant was given the effective date of promotion on assuming the charge of the post as Driver Grade-II, his juniors were given the effective date of promotion right from the date they completed 9 years regular service in the ordinary grade. The respondents

have not explained convincingly on what basis they have denied the applicant the benefit of effective date of promotion on completion of 9 years as was given to his juniors. Although he took up the matter of anomaly in the grant of date of promotion as early as 25.01.2006, he was given an interim reply only on 22.10.2007 to the effect that the matter has been referred to the Joint Commissioner (Pers), NVS, New Delhi, seeking clarification vide letter 14.05.2007. The respondents had with them a clarification dated 10.02.2005 (Annexure R1-C) issued by the Headquarters, which is reproduced below :

"Sub: Clarification for date of effect for granting grade II promotion to the Vidyalaya Drivers .

Sir/Madam,

Approval of the competent authority is hereby conveyed for promotion of drivers of JNV's cadre as par with staff car drivers of Hqrs./Regional office cadre from ordinary grade to drivers grade-II in the pay scale of Rs. 4000-100-6000/- with effect from the date of their becoming eligible on completion of 9 years regular services in ordinary grade subject to fulfillment of other terms and conditions prescribed."

8. What was the clarification sought vide letter dated 14.05.2007 when the respondents had already with them a clarification dated 10.02.2005 is not explained. The respondents stated that on the strength of the clarification dated 10.2.2005 the juniors of the applicants were given effective date of promotion on completion of 9 years of regular service in the feeder cadre. A plain reading of the said clarification would show that it is applicable to the applicant as well. The stand taken by the respondents that the clarification has only prospective effect is apparently wrong. The clarification is given in respect of granting Grade-II promotion to the Vidyalaya drivers in accordance with the relevant provision of the promotional scheme which came into force on 28.10.1999. It does not modify the relevant provision of the promotional scheme. It only clarified what was already provided in the scheme. It is only a reiteration and not an addition or alteration.

Promotion is to be granted to the juniors of the applicant, not based on the clarification but based on the relevant provision of promotional scheme dated 28.10.1999. The clarification does not provide that it would have prospective effect only. As per the terms of promotional scheme, a driver in the ordinary grade is eligible for promotion to driver Grade-II after rendering 9 years of regular service in the ordinary grade. When his juniors are given promotion with effect from the date they completed 9 years in the ordinary grade, there is no reason why it should not be given to the applicant also on completion of 9 years regular service in the ordinary grade.

9. A driver in the ordinary grade can be given promotion to driver Grade-II after rendering 9 years of regular service in that grade. The phrase of 'after 9 years regular service' does not give the respondent authority an arbitrary power to differentiate one group of drivers promoted in a particular year from another group promoted in another year in the matter of granting effective date of promotion at their will and pleasure, so long as the provision of the scheme under which both the groups are promoted remains the same. They have to follow a uniform practice to avoid discrimination. As the respondents have given promotion to the juniors of the applicant on completion of 9 years of regular service in the ordinary grade, the applicant is also eligible for promotion on completing 9 years regular service in the ordinary grade and all consequential benefits.

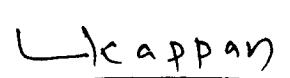
10. It would have been better, had the authorities been careful not to sacrifice clarity by placing the word 'after' before the phrase 'rendering nine years' instead of 'on'. Carelessness in drafting an order can make a mess of its implementation. The beneficiaries of a benevolent order should not be subjected to discrimination, arbitrariness and heart burn.

11. In the result, the O.A. succeeds. The respondents are directed to modify the date of effect of promotion of the applicant as Driver Grade-II on completion of 9 years regular service in the ordinary grade as granted to his juniors with all consequential benefits, within a period of 30 days from the date of receipt of a copy of this order.

12. There shall be no order as to costs.

(Dated, the 25th March, 2010)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

cvr.