

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.138/2006

Tuesday this the 7th day of August, 2007

CORAM

**Hon'ble Mrs. Sathi Nair, Vice Chairman
Hon'ble Mr. George Paracken, Judicial Member**

Antony A.T. S/o A.A.Thomas,
HS-1, (Precision Grinder)
Naval Ship Repair Yard,
Naval Base, Kochi-682004.
Residing at Adichiyil House, Thykoodam
Vytilla, Cochin.19.Applicant

(By Advocate Mr.N.N.Sugunapalan (Sr.Counsel)
along with Advocate Mr. M.C.Gopi)

V.

- 1 The Flag Officer Commanding in Chief,
Headquarters, Southern Naval Command,
Naval Base, Cochin-682004.
- 2 The Commodore Superintendent,
Naval Ship Repair Yard, Naval Base,
Cochin-682004.
- 3 The Selection Board, constituted by the
1st respondent for selection to the post of
Chargemen Grade II, Naval Base
Cochin.682004.
- 4 C.Satheesh Babu, Chargeman II (Machine)
Naval Aircraft Yard, Wellingdon Island,
Cochin-682003.Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGC (for R.1to3)
Advocate Mr. K.S.Bahuleyan for R.4)

This application having been finally heard on 27.7.2007, the Tribunal on
7..8..2007 delivered the following:



ORDER

Hon'ble Mr. George Paracken, Judicial Member

Both the Applicant and the 4th respondent in this application belong to the Highly Skilled-I (HS-I for short) category. While the Applicant is a general category employee, the 4th respondent belongs to the Scheduled Caste Community. In the feeder cadre for the post of HS-I, the Applicant was senior to the Respondent No.4. Being a Scheduled Caste employee, the 4th Respondent was given reservation in promotion and thus he got accelerated promotion to the post of HS-I on 26.3.1997. However, the Applicant got his promotion as HS-I only in his turn with effect from 24.3.2003. Thus the Respondent No.4 has become senior to the Applicant in the HS-I grade. Next promotion for both the Applicant and the 4th Respondent is to the grade of Chargeman Grade II. When three vacancies in the category of Chargeman Grade II have arisen in the year 2005, the Applicant made a representation for his promotion to the said post in preference to the 4th Respondent stating that out of the six promotions made to the grade of Chargeman Gr.II during the period from 1991 to 1999, four posts have been given to the SC category and only two posts have been given to the general category and thereby there was already over representation of Scheduled Castes in the said grade. The respondents have rejected the request of the Applicant vide the impugned Annexure.A1 letter dated 29.12.2005.

2 According to the Respondents, following the judgment of the Apex Court in the case of *Union of India vs. Virpal Singh Chauhan , JT 1995(7) SC 231*, the Government of India, Department of Personnel and

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Training have issued OM No.20011/1/96-Est(D) dated 30.1.1997 to modify the then existing policy of fixation of seniority which stipulated that, if a candidate belonging to the Scheduled Caste or Scheduled Tribe is promoted to an immediate higher post/grade against reserved vacancy then his senior General/OBC candidate who is promoted later to the said immediate higher post/grade, the General/OBC candidate will regain his seniority over such earlier promoted candidates of the SC and ST in the immediate higher post/grade. The effects of the aforesaid OM dated 30.1.1997 was negated by the Government of India by amending Article 16 (4A) of the Constitution right from the date of its inclusion in the constitution, i.e., 17.6.1995 to allow the government servants belonging to the SCs/STs to retain seniority in the case of promotion by virtue of rule of reservation. In other words, the candidates belonging to the General/OBC candidates promoted later will be placed junior to the SC/ST government servants promoted earlier by virtue of rule of reservation. Following the aforesaid amendment of the Constitution, the Government of India, Department of Personnel and Training issued another Memorandum dated 21.1.2002 with retrospective effect from 30.1.1997 giving effect to the said amendment. Accordingly, the SC/ST government servants, on their promotion by virtue of rule of reservation/roster, are entitled to consequential seniority, that too, retrospectively with effect from 17.6.1995. The contention of the respondents, therefore, is that since the OM dated 30.1.1997 issued after the judgment of the Apex Court in *Virpal Singh Chauhan* (supra) has been withdrawn and replaced by the OM dated 21.1.2002 following the amendment to the Article 16(4A) of the Constitution with retrospective



effect from 7.6.1995, the applicant's request for treating him as senior to the 4th respondent in the HS-I grade cannot be accepted.

3 The Respondent No.4 has filed a reply and the same is in agreement with the reply filed by the official respondents.

4 The official Respondents have also filed an additional affidavit stating that as on 2.7.1997, there were four incumbents in the grade of Chargeman Grade-II and they have been placed in the post based roster as per the model roster introduced by the Government vide Annexure.R.1 Office Order dated 21.1.2002. The post of Chargeman Grade-II being a small cadre having only 5 sanctioned posts, it was maintained as per the "model roster for cadre strength upto 13 posts". As prescribed in Annexure R.1 guidelines, at the stage of initial operation of reservation roster , it was necessary to adjust the existing appointments in the roster. When the post based roster was introduced on 2.7.1997, there were only 4 candidates in the grade of Chargeman Grade II namely, S/Shri T.V.Chandrasekharan, K.Sasi, K. Sivapalan and TV.Raveendran. They have been adjusted against the first four points meant for unreserved candidates. S/Shri K.Sasi, K.Sivapalan and T.V.Raveendran were Scheduled Castes. They were the seniormost candidates in the feeder cadre and they got their promotion as Chargeman-II in their turn and not because of any reservation. Thereafter two more vacancies were filled up on 14.8.97 and 30.11.99 respectively against the unreserved posts and out of them one was a SC candidate. Two more posts have now been arisen at points No.7&8 respectively. 7th point is meant for SC candidate and the 8th one is meant for unreserved candidate. According to the

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Respondents the Applicant will be considered in the Departmental Promotion Committee meeting for promotion to the post of Chargeman Grade II being the seniormost general category candidate in the post as on date.

5 We have heard Advocate Mr.M.C Gopi for the Applicant, Advocate Mr.V.A.Shaji appearing on behalf of SCGSC for the official Respondents and Advocate Mr.K.S.Bahuleyan for the 4th Respondent. It is true that the Applicant was senior to the 4th Respondent in the feeder cadre for the post of H.S.I. Being a S.C category employee, the 4th Respondent got the accelerated promotion as HS-I on 26.3.1997. Admittedly, the Applicant who is a general category employee was promoted to the said post only on 24.3.2003. After the judgment of the Apex Court in *Virpal Singh Chauhan's case (supra)* and the DOPT OM No.20011/1/96-Estt(D) dated 30.1.1997 the Applicant would have regained his seniority on his promotion in the grade of HS-I on 24.3.2003, had there been no change in the policy regarding reservations and consequent seniority. However, by virtue of the Constitution (Eighty Fifth) Amendment Act, 2001, Article 16 (4A) was amended retrospectively w.e.f. 17.6.1995 with a view to allow the Government servants belonging to SCs/STs to retain the seniority in the case of promotion by virtue of rule of reservation. Article 16(4A) as amended reads as under:

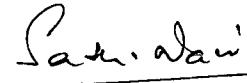
"16.(4-A). Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."

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Accordingly, the Government of India, Department of Personnel and Training has also issued the Office Memorandum No.20011/1/2001-Estt(D) dated 21.1.2002 negating the effects of the DOPT OM dated 30.1.1997. In view of the aforesaid amendments in the Constitution and the consequential revised instructions of the Government of India in O.M dated 21.9.2002, we do not find any merit in the present O.A and, therefore, the same is dismissed. There shall be no order as to costs.

Dated this the 7th day of August, 2007


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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