

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.154/2006

Tuesday this the 19th day of June, 2007

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

T.Venugopalan, aged 61 years
S/o T.Mamban (retd. As Cinema Projectionist Gr.II)
Thavakkara House,
Pattel Road, Chirakkal PO
Kannur.11.

...Applicant

(By Advocate Mr.P.C.Sebastian)

V.

- 1 The Additional Director General & Recruiting
Adjutant's General Branch
Army Headquarters, West Block III
R.K.Puram, New Delhi.110 066.
- 2 The Deputy Director General (Recruiting)
Headquarters recruiting Zone,
148 Fd Marshal K.M.Cariappa road,
Bangalore.25.
- 3 Director Recruiting
Branch Recruiting Office
Thiruvananthapuram.
- 4 The Union of India, represented by
Secretary to Govt. of India,
Ministry of Defence,
Sena Bhavan, New Delhi.

Additional respondent impleaded as R.5 vide Order in MA 298/06::

- 5 Shri Basheer Shariff,
Cinema Projectionist Grade I
Headquarters, Recruiting Zone,
(Army), Jabalpur.

...Respondents

(By Advocate Mr.TPM Ibrahim Khan,SCGSC for R.1to4)

The application having been heard on 14.6.2007, the Tribunal on 19.6.2007 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The claim of the applicant in this OA is that the 5th respondent Shri Basheer Sherrif is junior to him and therefore, he was actually entitled to be considered for promotion as Cinema Projectionist Grade-I before Shri Sherrif was promoted to that post. He has, therefore, prayed that he should be promoted retrospectively at least with effect from 13.9.78, the date on which Shri Sherrif was posted in the said grade with all consequential benefits including arrears of salary and related benefits.

2 The applicant was initially appointed as Cinema Projectionist Grade III with the respondent No.2 with effect from 5.8.68. Before 1.1.86 there were only two grades of officials in the cadre of Cinema Projectionists, namely, grade III in the scale of Rs. 950-1500 and Gr.II in the scale Rs. 1200-1800. Grade II was the promotional cadre for Grade III. From 1.1.86 the Grade III and Grade II cadres were re-designated as Grade II and I respectively, without any other changes with the corresponding pay scales of Rs. 3050-4590 and Rs. 4500-7000 respectively. The applicant was promoted from Grade III to Grade II with effect from 25.5.82 and later re-designated as Grade I with effect from 1.1.86. He worked in the same capacity and retired on 31.5.2005.

3 The 5th respondent joined service as Cinema Projectionist with the Defence Service Staff College (DSSC for short). Later, on transfer he joined the official respondents on 1.5.84 as Grade III Cinema Projectionist. Since the applicant was already promoted as Grade II with effect from 26.5.82 and the 5th respondent has joined as Grade III only on 1.5.84, there was no dispute regarding their seniority and accordingly the respondents

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have issued Annexure.A1 Seniority List of Cinema Projectionists Gr.I as on 30.6.1996 with the name of the 5th respondent at Sl.No.6. It has been mentioned in the said list that he joined government service on 13.9.78 and his date of appointment as Cinema Projectionist Gr.III with the Respondent at the recruiting unit at Jabalapur was on 1.5.84. In the seniority list of Cinema Projectionists Grade-II as on 30.6.1996 annexed as Annexure.A1(a) to this OA, the applicant's name has rightly been shown at Sl.No.3 with his date of continuous service as 5.8.68, joining the recruiting organization as 5.8.68, date of appointment as Cinema Projectionist Gr.III as 5.8.68 and date of promotion as Gr.II as 26.8.82. The applicant had reconciled to the fact that he could get the promotion to the Grade I (formerly Grade II) only from 26.8.82 though his turn for promotion came in 1973 but the same was denied to him for want of vacancies. Suddenly just before his retirement on 31.5.2005 the respondents have issued Annexure.A2 Seniority Lists of Cinema Projectionists of the Recruiting organization on 20.5.2005 where in fact the 5th respondent was shown at No. 1 and the applicant at No.2. The date of continuous government service of Sherrif was shown as 13.9.78, the date of his joining the recruiting organization as 23.5.84 and date of appointment/promotion as Cinema Projectionist Gr.I as 13.9.78. In the remarks column it has been stated "as per CAT Jabalpur Judgment dated 11 May in OA 430/2000". In the case of the applicant, the date of continuous service shown as 5.8.68, the date of joining the recruiting organization as 5.8.68 and date of appointment/promotion as Gr.I as 26.8.82. According to the applicant, the fact that the 5th respondent was holding a position in the lower grade from 1984 and the applicant was holding a higher grade from 1982 has suddenly changed and the 5th respondent was declared senior to the applicant in the

Grade I which he was holding from 26.8.82. Resultantly he had to retire as a junior to the 5th respondent without being able to do anything in the matter. According to the applicant he was not a party in the OA 430/2000, in which the 5th respondent was declared as appointed as Gr.I not from the date of his joining the official respondents but with effect from the very date of his initial joining the service in the Defence Department i.e., 13.9.78. The applicant made a submission before the controlling authority against the revised Seniority List placing the 5th respondent above him in Gr.I with effect from 13.9.78. The third respondent took up the matter with the second respondent pointing out the fact that the applicant was denied Grade I in 1973 for want of vacancy when Shri Basheer Sherrif joined only on 13.9.78 as Grade II (formerly Grade III). Even if the 5th respondent is to be treated as Grade I w.e.f 13.9.78, the applicant's turn for promotion to Grade I came in 1973 itself. In other words, the third respondent wanted to convey to the second respondent that the applicant being senior to the 5th respondent he could have been promoted to Gr.I before the 5th respondent was even appointed in the recruiting unit. In any case the competent authority in the respondent department have not taken any action on the Annexures.A3 and A4 letters of the third respondent. In the absence of any positive response from the controlling authority, the applicant caused to issue the Annexure.A5 legal notice dated 24.9.2005 to the first respondent through his advocate. It is in response to the said advocate's notice that the impugned A6 letter dated 7.10.2005 has been issued by the respondent No1. It has been stated in the said letter that the 5th respondent Shri Basheer Sherrif was appointed in the higher grade of Cinema Projectionist Gr.II (now Grade I) by DSSC, Willington on 13.9.78. On joining the DSSC he was only given the pay scale of Grade III(now

Grade II). Therefore, he had approached the CAT, Jabalpur Bench by filing OA 430/2000. It was on the directions of the Tribunal that the 5th respondent who has initially been appointed as Cinema Projectionist Gr.II (re-designated as grade I) with effect from 13.9.78 was placed above the applicant in Grade I.

4 The grounds taken by the applicant in filing the present OA is that the respondents ought to have considered the applicant for appointment in Gr.I before the 5th respondent was placed in that grade retrospectively from 13.9.78 in view of the fact that the applicant was not a party to the OA 430/2000 filed by the 5th respondent before the Tribunal. He has also submitted that he had not been given any notice or pre-decisional hearing before the seniority position has been altered affecting his vested interest.

5 The respondents along with their reply have furnished a copy of the order in OA 43/2000 decided on 11.5.2005. The findings of the Tribunal was that the applicant therein was initially appointed against Grade II post and not Grade III post and therefore, he was entitled to be treated as Grade II Cinema Projectionist from the initial date of his appointment itself and he was also entitled for the pay scales attached to the same.

6 We have heard Shri P.C.Sebastian for the applicant and Shri TPM Ibrahim Khan, SCGSC for Respondents 1 to 4. The 5th respondent who was appearing in person was not present. The main contention of the applicant in this OA, supported by respondent No.3 is that he was denied the promotion as Grade I in 1973 for want of vacancy. According to them the vacancy in Grade I became available only with effect from 26.8.82 on which date the applicant was promoted to Grade I. Had there been a


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vacancy of Grade II in 1973 or any time before 26.8.82, the applicant who was eligible to be promoted to Grade I from 1973 onwards would have been considered for that post. According to the respondents also there was no post of Cinema Projectionist Grade I available prior to 26.8.82. It was for this reason that the 5th respondent was appointed in Grade III (later on re-designated as Grade II) on 23.5.84 on transfer from the Defence Department. They could have considered the applicant also for promotion as Cinema Projectionist Grade I when the Jabalpur Bench of this Tribunal has declared that the 5th respondent as appointed as Cinema Projectionist Grade II (re-designated as Grade I) from the date of his initial appointment itself ie, 13.9.78. The Tribunal has never declared the 5th respondent as senior to the applicant. The fact is that the applicant was actually waiting for his promotion to Grade I from 1973 onwards and the 5th respondent has joined service much later ie., in 1978. He was denied promotion to Grade I only for want of vacancy in the said Grade. This position has also been confirmed by the third respondent in his Annexures.A3 and A4 letters to the second respondent that the applicant had become eligible to be promoted to the Grade I from 1973 onwards and he was not granted promotion only because there was no vacancy. In this view of the matter, the applicant should be considered senior to the 5th respondent. This aspect should have been considered by the official respondents before issuing the Annexure.A6 impugned letter. Since the applicant has already been retired on 31.5.2005, it would be a futile exercise to direct the respondents to promote him at this stage. In the given facts, there is also no scope for holding any DPC/Review DPC for the consideration of the suitability of the applicant for promotion to Grade I from 13.9.1978. However, since the fact is that the applicant has been denied his rightful claim of promotion, for

none of his fault, in our considered view it would be appropriate that the applicant should be treated as promoted to Grade-I at least with effect from 13.9.78 i.e., the date from which the 5th respondent has been granted the Grade-I scale in terms of the directions of the Jabalpur Bench of this Tribunal in OA 430/2000 dated 11.5.2004. We, therefore, direct that the respondents shall fix the pay of the applicant notionally in the Grade I from 13.9.78 and treat him as retired from Grade-I post. Since the applicant has not actually worked in the post of Grade I, he will not be entitled for any monetary benefits. However, the notional pay arrived at by the respondents shall be taken into consideration for determining his pension and other terminal benefits. The respondents shall issue necessary orders fixing his pay in Grade-I notionally from 13.9.78 till his date of retirement. The additional pensionary and other related benefits shall also be granted to him on the basis of the notional pay so arrived at. This exercise shall be completed within a period of three months from the date of receipt of this order.

8 The application is disposed of with the aforesaid directions. There shall be no order as to costs.

Dated this the 19th day of June, 2007


K.S.SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER