

Central Administrative Tribunal
Ernakulam Bench

OA No.171/2013

Friday this the 29th day of January, 2016

CORAM

Hon'ble Mr.Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs.P.Gopinath, Administrative Member

C.P.Jose
Master Craftsman (Fitter Electrical)
Naval Ship Repair Yard
Cochin-682 004.

.....Applicant

(By Advocate: Mr.C.S.G. Nair)

Versus

1. Union of India represented by its Secretary
Ministry of Defence
South Block, New Delhi-110 001
2. Flag Officer Commanding in Chief
Naval Ship Repair Yard,
Cochin-682 004.
3. Bejy Sabu Kallingal
Chargeman (Electrical) NSRY
Kochi-682 004.
4. P.Asok Kumar
Chargeman (Electrical)
INA Ezhimala
Kannur Dstrict-670310.

Respondents

(By Advocate: Mr. N.Anil Kumar, Sr.PCGC (for R1&2)
Advocate Mr. S.Radhakrishnan for R4)



The OA having been finally heard on 17.12.2015 this Tribunal delivered the following order on 29.1.2016.

ORDER

Per: Mrs. P.Gopinath, Administrative Member

Applicant, presently working as Master Craftsman with Naval Ship Repair Yard Kochi, is aggrieved by the alleged denial of promotion as Chargeman, his next promotional post. According to him, willingness was called for, for the said promotion and posting at INA Ezhimala. By Annexure A-3 letter, the applicant refused to be posted at Ezhimala. As per Annexure A4, one P.Ashok Kumar who is junior to the applicant, was promoted as Chargeman (Fitter Electrical) and posted at Warship Overseeing Team (WOT) Kochi. Irked by the promotion of his junior, the applicant made a representation Annexure A5, followed by other requests. Finding no response, the applicant has filed the present OA seeking the following relief:-

Direct the 2nd respondent to conduct a review DPC for the year 2011-12 and promote him as Chargeman w.e.f. the date on which his junior Sri P.Ashok Kumar was promoted as Chargeman, with all consequential benefits including arrears of pay and allowances.

2. Respondents resist the claim of the applicant contending that during the vacancy year 2011-12 there were three vacancies of Chargeman (Electrical), of which one each was reserved for SC and ST category. The remaining one was reserved for general candidate. Candidates belonging to SC/ST category were not available. The third lone vacancy was meant for INS Zamorin. Willingness was called for, for filling up this vacancy. Applicant refused for being posted to



INS Zamorin. Hence the next willing person happened to be Sri Asok Kumar, junior to the applicant, who was posted there. Respondents further contend that the relief sought by the **applicant has already been granted by promoting him as Chargeman (Electrical) and posting him to WOT, Kochi.**

3. Heard learned counsel for the applicant and the respondents and perused the written submissions made. It is very apparent from the OA and the reply statement of the respondents that INS Zamorin at Ezhimala is an unpopular posting and this position is supported by Annexure R4(d). Applicant submitted specific application for not being considered for Ezhimala posting. His unwillingness dated 15th March 2011 reads thus:-

"I have come to understand that technical posts at INA Ezhimala for the year 2011-12 are being filled. Though I am an eligible candidate for considering to the post, due to some unavoidable family problems I am unable to accept the post at INA Ezhimala.

It is therefore requested that my name may not be considered for filling up the vacancy at INA Ezhimala."

4. The fourth respondent expressed willingness for posting to Ezhimala and hence was promoted to fill up the vacancy at INA Ezhimala on out of turn basis. Annexure R4(d) reads thus:-

"2. It is intimated that a DPC was conducted as a special case to consider eligible individuals for out of turn promotion to the post of Chargeman-II (Electrical) so as to fill up the vacancy at INA Ezhimala. Accordingly, Sri Ashok Kumar, HS (Electrical), who was junior in the seniority/eligibility list was considered for out of turn promotion as the seniors have submitted unwillingness to move to INA Ezhimala. However, on being promoted, the above individual was posted to WOT(K) on temporary basis only."


5. Respondents do not anywhere submit any documents supporting the



above move and being a part of Indian Navy has only stated in Annexure R4(d) that the fourth respondent who is junior in the seniority list was considered for out of turn promotion as seniors have submitted their unwillingness to move to INA Ezhimala.

6. The normal procedure in any promotion is to promote persons as per seniority list and in case a person refuses promotion or movement on promotion on being handed over the promotion order, he can be debarred for a period of one year after obtaining a written refusal of movement to promotion station. It is understandable that Ezhimala is a difficult posting and volunteers for posting are not easily available. But the respondents cannot go beyond the Department of Personnel and Training guidelines in effecting promotion strictly as per seniority list subject to fitness. Nowhere do the respondents mention the unfitness of three persons who were superseded to give posting to 4th respondent to Ezhimala. Nor have they produced any recruitment rules which support such supercession.

7. The issue that arises for consideration is that the applicant prior to the holding of DPC gives Annexure A3 written application that he is unable to accept the post at INA Ezhimala. Of the three vacant posts, two were reserved for SC/ST and only one OC vacancy was available. Such an application being available on record, the respondents could have held a DPC as per seniority list and promoted persons as per seniority which would have been the correct course of action. In the case of applicant, the respondents should have made an



offer of appointment and on receipt of a second letter of refusal to move to INS Ezhimala, could have debarred him for a period of one year as per rules. But bypassing the applicant in considering him in turn for promotion was not admissible under the rules of seniority and promotion. In Annexure A3 application, applicant merely requests that he may not be considered for filling up vacancy at INA Ezhimala. Nowhere does he concede that he is unwilling to be promoted. The respondents have unwittingly combined two parts of an act – the promotion of applicant in turn and secondly his application for not being considered for INA Ezhimala posting. It is necessary to segregate the two issues and consider them one by one in turn. There was no point in jumping the gun and making an out of turn promotion unless there are written instructions that in the interest of security or otherwise, manning posts with promoted persons acquires priority over seniority or gradation list based promotions. Whereas respondents would have been fully in place in promoting the applicant offering him the Ezhimala post and on his refusal, debarring him from promotion for a period of one year, refusing to consider him in turn as per seniority for promotion was not an available option.

8. As stated earlier the applicant has already submitted Annexure A3 written application expressing his unwillingness to accept the post at INA, Ezhimala. It has also been noted therein that only one OC vacancy is available. Hence in order to have the correct procedure followed, we direct a review DPC for the year 2011-12 be held to consider all eligible candidates for



the available vacancies. Respondents shall not call for any fresh applications for posting. The respondents will offer the posting in the order of seniority. If the applicant is posted at INA, Ezhimala and if he refuses to join the posting so offered, it can be offered to the next senior employee. If the applicant expresses his willingness he should be asked to move to the place of posting availing normal joining time only. In case of refusal, the debarment clause will certainly become operative. Respondents will incorporate in the posting order itself that in the event of non-joining within the prescribed joining time, the post will be offered to others in the order of seniority.

9. O.A is disposed of accordingly. No order as to costs.


(Mrs. P. Gopinath)
Administrative Member


(N. K. Balakrishnan)
Judicial Member

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