

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.195/08

Friday this the 29th day of May 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

G.Mohanan,
S/o.Gopi,
CMD (OG) INS Venduruthy,
Naval Base, Cochin - 4. ...Applicant

(By Advocate Mr.Madhu T)

Versus

1. The Flag Officer Commanding in Chief,
Head Quarters, Southern Naval Command,
Cochin - 4.
2. Union of India represented by its Secretary,
Ministry of Defense, New Delhi. ...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard 29th May 2009 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A-1 order of the respondents dated 11.2.2005. According to the said order, the applicant was appointed as Camp Guard (Rs.750-940) with effect from 8.2.1988 and later promoted as MTD Grade II (Rs.950-1400) with effect from 16.4.1991. As per the revised structure, he was placed in the Grade of CMD (OG) in the pay scale of Rs.3050-4590 with effect from 1.1.1996. Thereafter, he was granted promotion as CMD Grade II (Rs.4000-6000) with effect from



8.11.2002. It was further stated in the said order that while holding the post of CMD II (Rs.4000-6000) he was transferred to Southern Naval Command on compassionate ground and reverted as CMD (OG) in the scale of Rs.3050-4590 with effect from 11.9.2003. He was also granted the 1st ACP with effect from 11.9.2003 (Rs.4000-6000) vide letter No.GS/2700/ACP/Cor dated 2.11.2004 i.e., the date of his reporting in the Command taking into account of his past service. According to the respondents the applicant has already got one promotion during the period of his service and he is not eligible for the 1st ACP benefits. As such the 1st ACP already granted to him has been cancelled and refixed his pay accordingly in the Grade of CMD (OG) with effect from 11.9.2003. The applicant challenged the aforesaid order on the ground that the same is illegal and arbitrary. He has also submitted that the aforesaid order has been passed by the 1st respondent on the mistaken notion that his appointment as Driver Grade II with effect from 16.4.1991 is by promotion whereas his appointment as Driver Grade II on 16.4.1991 was pursuant to a notification issued by the 1st respondent inviting application for selection of candidates for the post of Driver Grade II and that he came out successful in the test conducted by the respondents. Consequently he was appointed as Driver Grade II.


2. We have heard Shri.Varghese P.Thomas on behalf of Shri.Madhu T for the applicant and Smt.Jisha on behalf of Shri.T.P.M.Ibrahim Khan,SCGSC for the respondents. It is an admitted position that during the service period of the applicant, he was given one promotion as CMD Grade II in the scale of pay of Rs.4000-6000 with effect from 8.11.2002. According to the ACP Scheme, only if no promotion is granted to an



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employee within first 12 years of service he is entitled to get the 1st ACP on completion of such 12 years. Since the applicant has already been granted one promotion during the first 12 years, we do not consider that the action of the respondents in cancelling the 1st ACP granted to him erroneously was wrong. We, therefore, do not find any merit in this application and the same is accordingly dismissed. There shall be no order as to costs.

(Dated this the 29th day of May 2009)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.195/08

Tuesday this the 28th day of February 2012

C O R A M :

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

G.Mohanan, S/o.Gopi,
CMD (OG) INS Venduruthy, Naval Base, Cochin – 4. ...Applicant

(By Advocate Mr.Johnson Gomez)

Versus

1. The Flag Officer Commanding in Chief,
Head Quarters, Southern Naval Command,
Cochin – 4.
2. Union of India represented by its Secretary,
Ministry of Defense, New Delhi. ...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 28th February 2012 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER


This Original Application is filed on a misconception that the applicant has not been given promotion from Camp Guard to Motor Transport Driver Grade II. Earlier the Tribunal had dismissed the application finding that the applicant has already been granted one promotion during the first 12 years. However, reference is made to promotion given as CMD Grade II. There was a Writ Petition before the Hon'ble High Court and the Hon'ble High Court allowed the Writ Petition with liberty to the applicant to file a review before the Tribunal.



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Subsequently a review was filed and review was allowed and the matter is posted for rehearing. At this stage the Tribunal called for the records relating to the case which was produced. After verifying the records, the learned counsel appearing for the applicant submits that actually he had been granted a promotion from Camp Guard to that of Motor Transport Driver Grade II within the period of 12 years. As such, he is not pressing for his claim for ACP benefits. That being so nothing remains to be done in this case except to dismiss the same. However, counsel appearing for the applicant would submit that the applicant is at present working as CMD Ordinary Grade. Earlier he was given a promotion to CMD Grade II which was cancelled when he was transferred on compassionate ground to Southern Naval Command. According to him, on transfer his promotion need not have been cancelled, but he need only to join the post as junior most in the post which is held by him prior to the transfer. So, he has already submitted a representation against cancellation of his promotion from CMD Ordinary Grade to CMD Grade II at the time of transfer and for his pay protection. He, therefore, prays that the representation made in this behalf be considered by the authorities and dismissal of this Original Application will not prejudicially affect his right to pursue the representation for the consequent relief as stated above.

2. We have heard both sides. The promotion from CMD Ordinary Grade to CMD Grade II was cancelled on he being transferred on compassionate ground to South Naval Command. If this was the position and there was no other promotion possibly the applicant would have been entitled for ACP benefits but actually the records would show that he had



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been promoted from Camp Guard to that of Motor Transport Driver Grade II. If so, he is not entitled for ACP benefits. Whether his promotion to CMD Grade II could be cancelled or not is a different aspect altogether which has nothing to do with the ACP benefits. In the circumstances and acceding to the request made by the counsel appearing for the applicant this Original Application is dismissed in respect of his claim for ACP benefits. However, since his promotion from CMD Ordinary Grade to CMD Grade II was cancelled on his transfer on compassionate ground to Southern Naval Command and since he has made representation in that behalf the dismissal of the present Original Application will not stand in the way of the applicant pursuing his remedy against such relief prayed for in this representation.

(Dated this the 28th day of February 2012)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

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