

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.229/2001

Thursday this the 30th day of January, 2003.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

C.Veerabhadran
Driver-cum-Operator-B
Liquid Propulsion Systems Centre (LPSC)
I.S.R.O. Valiamala
Trivandrum. Applicant

(By advocate Mr.M.Rajagopalan)

Versus

1. Director
Liquid Propulsion Systems Centre
I.S.R.O., Valiamala
Trivandrum.
2. Director
Vikram Sarabhai Space Centre (VSSC)
Thumba, Trivandrum.
3. The Chairman & Secretary
Indian Space Research Organisation (ISRO)
Antariksh Bhavan
New B.E.L.Road
Bangalore.
4. Union of India represented by
Secretary
Ministry of Science & Technology
New Delhi.
5. Joy Babu
S.C.No.22610
Driver-cum-Operator-B
Vikram Sarabhai Space Centre
Thumba, Trivandrum. Respondents.

(By advocate Mr.C.N.Radhakrishnan(R1-4)
(Mr.G.S.Raghunath for R5)

The application having been heard on 30th January, 2003,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant at the time of filing of this OA was working as
Driver-cum-Operator (Fire Service) under the first respondent in
the Liquid Propulsion Systems Centre (LPSC) at Trivandrum. He
initially joined as Fireman on 13.12.1985 in Vikram Sarabhai



Space Centre (VSSC) under the 2nd respondent. According to him, the channel of promotion of Fireman trade was as Driver-cum-Operator-A then as Driver-cum-Operator-B and then to Sub Officer-A. He was promoted as Driver-cum-Operator-A with effect from 3.10.1989 and subsequently promoted as Driver-cum-Operator-B with effect from 1.10.98. He claimed that a common seniority list of both VSSC and LPSC was being maintained and he was one of the senior most Driver-cum-Operator-B in the combined seniority list. A-1 order dated 22.5.2000 was issued by 2nd respondent transferring a few officials including the applicant to LPSC, Valiamala with immediate effect. According to him, no willingness or option was asked while effecting transfer shown in A-1, and he was transferred keeping some of his juniors like the 5th respondent in VSSC. A-2 was the seniority list of Driver-cum-Operator-B published by the 1st respondent during February 2001. Applicant came to know that the 2nd respondent issued A-3 order dated 20.2.2001 asking the 5th respondent to report for medical check up for promotion to higher grade. According to him, the 5th respondent who was working subordinate to him till his transfer to LPSC was junior to him in all respects, having joined as Driver-cum-operator-A in November 1993 in VSSC. He was promoted as Driver-cum-operator-B only in April 2000. Finding that the 5th respondent was promoted overlooking the claim of the applicant, he filed this Original Application seeking the following reliefs:

- (a) Call for the records leading upto A-3 and direct the respondents to consider the name of the applicant for promotion to Sub-Officer, in preference to the 5th respondent.
- (b) Declare that the applicant has to be considered for promotion before considering the 5th respondent for promotion to Sub-Officer.



(c) To grant such other reliefs which this Tribunal may deem fit.

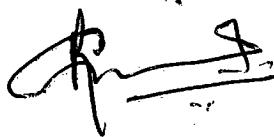
2. According to him, the office of the first respondent had advised him that his grievance could not be considered as he was not in VSSC. Claiming that he was transferred to LPSC against his willingness, which had disturbed the seniority and claiming that his transfer was meant for giving promotion to the 5th respondent, he sought the above reliefs.

3. 5th respondent filed a separate reply statement resisting the claim of the applicant. It was submitted that at the time of appointment of the applicant, the services of security, canteen, transport, fire service, Engineering Maintenance Division and Library were under the administrative control of VSSC and accordingly the applicant was appointed in LPSC by VSSC. It was submitted that VSSC was having only the administrative control over the above mentioned services in LPSC at that time. In May 2000, as per the directions of ISRO, VSSC handed over the aforementioned services to LPSC and LPSC took over the Valiamala Common Services from VSSC, as stated in A-1. Consequently the applicant and 21 other officials of FRS/VMC (Fire Service, Valiamala Complex) were transferred along with the posts held by them in LPSC, Valiamala with immediate effect. According to 5th respondent, the applicant had not challenged the orders mentioned in A1 and from the date of A1 he was working in LPSC, Valiamala without raising any objection. It was submitted that the applicant's contention that there was a common seniority list for VSSC and LPSC was wrong. According to the 5th respondent, it was for ISRO to decide as to which unit should be in administrative control of the common services of a particular unit and the applicant had no right to question the same. The 5th respondent submitted that he (5th respondent) was appointed as



Driver-cum-operator-A on 17.11.93 in VSSC whereas the parent department of the applicant was LPSC. According to him, promotion to the post of Sub Officer-A was by selection on the basis of merit and test. The selection was centre/unit based. When a vacancy of a Sub Officer arose in VSSC, selection would be from eligible candidates from the said unit viz. VSSC and only if candidates from VSSC were not available selection could be had from other units like LPSC. 5th respondent alone was eligible for promotion to the post of Sub Officer as per the promotion norms and accordingly he was called for selection to the said post and he was selected after conducting necessary test and interview. He was promoted as Sub Officer in 2001. According to him, the applicant cannot claim promotion to the post of Sub Officer-A in VSSC.

4. Respondents 1 to 3 filed separate reply statement resisting the claim of the applicant. It was submitted that the claim that a common seniority list of Fire Service Personnel of VSSC and LPSC was maintained was contrary to the fact. It was further submitted that the responsibility of administration and management of common services of Valiamala Complex comprising of security, canteen, transport, fire service, engineering maintenance division and library were shifted from VSSC to the LPSC, a constituent centre of ISRO located at Valiamala Complex, in public interest by the Government of India and accordingly R1(a) orders were issued. This was mentioned in A1. Consequent on the transfer or common service, the compliment of staff numbering 196 and consisting of Engineers, Technicians and administrative staff in the sections constituting the common services and borne on the rolls of VSSC until then as listed in

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Annexures I, II and III of R1(a) were also encadred in LPSC. It was submitted that the applicant's contention that he was not given any option was not tenable in as much as none of the 196 employees was given any option. He was not given any assurance regarding seniority. It was submitted that all major centres of ISRO had separate fire service personnel borne on the rolls of respective centres and for the purpose of seniority, promotion etc. they were treated as independent cadre belonging to the respective centres. It was further submitted that promotion to Sub Officer-A was center based. Under the Limited Flexible Complementing Scheme (LFCS), fire service personnel comprising of different cadres were divided into five levels and movement from one scale to another, within the same level of hierarchy would be based on a criterion of specified number of years of satisfactory service linked to screening, ACR, on the job performance, test, interview, physical fitness and endurance test etc., without the need for a vacancy at the higher grade within the same level. But promotion from one level to another would continue to be based on sanctioned strength of post in view of the requirement of command structure. The post in the lower grade held by the person promoted to the higher grade within the same level under the LFCS would be upgraded to the higher grade within the same level to accommodate the promotion. In terms of orders on Career Opportunities for Fire Service personnel recruitment/promotion to the post of Sub Officer-A was subject to availability of vacancies and was centre based. According to them, LPSC and VSSC being two different constituent centres of ISRO, the vacancies of the post of Sub Officer-A arising in a particular centre could be filled from amongst the eligible candidate from the said centre alone after due process of selection. The applicant who was

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borne on the rolls of LPSC could not stake claim to a vacancy existing in VSSC. The vacancy of Sub Officer-A against which he 5th respondent was considered had arisen in VSSC which was entirely a separate entity in relation to service matters of employees. It was further submitted that there were other candidates fulfilling the norms for consideration to the post of Sub Officer-A in other centres of ISRO like Space Applications Centre, Ahemedabad, SHAR Centre, Sriharikota, ISRO Satellite Centre, Bangalore as well and they could not be considered. According to them the seniority list was maintained centre-wise in respect of all posts in the subordinate formation in the administrative stream and accordingly the seniority list of fire service personnel of VSSC and LPSC were maintained separately.

5. Heard the learned counsel for the parties who reiterated the points made in the respective statements.

6. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record. During the course of the hearing, learned counsel for the respondents was specifically asked to produce the documents to show that the seniority list of VSSC and LPSC, Valiamala were maintained separate, prior to the administrative control of Fire Services of LPSC being handed over to LPSC by office order dated 22.5.2000.

7. Today when the OA was taken up for hearing, learned counsel for the respondents submitted that the only seniority list of Driver-cum-Operator-A and Driver-cum-Operator-B which was

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available prior to the bifurcation was one of Driver-cum-Operator-A as on 1.1.92 and as on 1.1.98. This apart, a provisional seniority list of Driver-cum-operator-B as on 1.1.01 was also produced by him. On perusal of this seniority list, we find that the said seniority list produced by the respondents' counsel is one which had been published after the bifurcation and will not indicate whether a combined seniority list was maintained or not prior to the bifurcation. The seniority list of Driver-cum-operator as on 1.1.92 and 1.1.98 shows that the seniority lists of VSSC and LPSC were maintained in a combined fashion. Learned counsel for the respondents referring to the seniority list submitted that even though the list was maintained combined, it was indicated in which division the staff were working.

8. Applicant had specifically averred that he was transferred to LPSC, Valiamala on bifurcation against his willingness. From the papers produced before us, we find that the averment made in the reply statement that separate seniority lists were being maintained prior to the bifurcation for the post of Driver-cum-operator in VSSC and LPSC is not borne out of facts. When such is the case, we have no other alternative but to draw a conclusion that the applicant's averments that a combined seniority list was maintained for the purpose of promotion from one level to another, irrespective of occurrence of vacancy in VSSC/LPSC is a factual one. In this view of the matter, we hold that not considering the applicant who was senior to the 5th respondent for promotion to the post of Sub Officer as not legal.

It is now well established that in service matters, the right for consideration for promotion is a fundamental right and

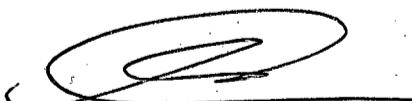
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not considering him for promotion is a denial of a fundamental right and the same cannot be sustained. In these circumstances, we declare that the applicant is eligible to be considered along with other similarly placed employees including fifth respondent who were borne on the combined seniority list of VSSC/LPSC prior to its bifurcation, for the post of Sub Officer-A which had occurred in VSSC, subject to fulfillment of other eligibility conditions as laid down in the relevant recruitment rules.

9. When the OA came for admission on 5-3-01, as an interim measure, it was directed that if the 5th respondent is promoted, the same would be subject to the final outcome of this OA. The respondents had issued promotion orders to the 5th respondent by R5 order dated 26.3.01. As we find the non-consideration of the applicant and other similarly placed as not legal, we have no hesitation in setting aside and quashing this R-5 order. We do so accordingly. We direct the respondents to consider the applicant and other similarly placed employees in accordance with the combined seniority list of VSSC/LPSC for the post of Sub Officer-A, within a period of 3 months from the date of receipt of the copy of this order.

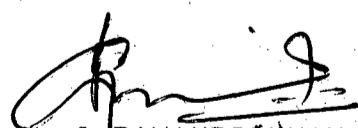
10. The OA stands disposed of as above, with no order as to costs.

Dated 30th January, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER