

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 255 of 2011

Friday, this the 23rd day of March, 2012

CORAM:

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

C.G. Ramadas,
Foreman (AS),
Presently working as Staff Instructor,
Air Engineering Faculty,
Naval Institute of Aeronautical Technology,
Naval Base, Kochi.

- Applicant

(By Advocate Mr. S. Radhakrishnan)

versus

- 1 Union of India represented by the Secretary,
Ministry of Defense, New Delhi – 110 011.
- 2 The Chief of Naval Staff,
Integrated Headquarters of Ministry of Defence,
New Delhi – 110 011.
- 3 The Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command,
Kochi – 682 004.
- 4 The Chief Staff Officer (P&A),
Headquarters, Southern Naval Command,
Kochi – 682 004.
- 5 P. Sreedharan Pillai,
Foreman,
Naval Institute of Aeronautical Technology,
Naval Base, Kochi – 682 004.
- 6 K.T. Gireesan,
Foreman, Naval Air Craft Yard,
Naval Base, Kochi – 682 004. - Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC for R1-4)

This application having been heard on 05.03.2012, the Tribunal
on 23-03-12 delivered the following:



ORDER

By HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant, an ex-serviceman, was appointed as Chargeman, later redesignated as Foreman, in the cadre of Aviation Technical Supervisory Cadre (ATS Cadre) on 26.07.1999. The ATS cadre had 3-tier structure (3TS) of Senior Chargeman, Foreman and Senior Foreman. The Government of India on the recommendations of the V Central Pay Commission introduced 4-tier structure (4TS) for enlarging the promotional opportunities for the technical supervisory category vide order dated 26.12.2001 with Chargeman-II, Chargeman-I, Assistant Foreman and Foreman. The posts in the existing 3 grades were given new designations and the new grade of Assistant Foreman was placed in the 3rd tier. No recruitment rules were made for the posts in the new structure.

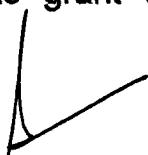
2. On completing 3 years as Foreman in the 3TS, the applicant was eligible to be promoted as Senior Foreman on 26.07.2002 and there was a vacancy in the trade of the applicant in the 3TS. However, he was promoted as Assistant Foreman in the 4TS on 11.03.2003 alongwith 5 others de hors the recruitment rules based on the seniority in the feeder grade of Chargeman-I. The persons promoted alongwith the applicant were not having any vacancy for promotion as Senior Foreman in the 3TS. If the applicant was promoted in accordance with the recruitment rules in existence he would have been promoted as Senior Foreman and would have been placed above them. The applicant was promoted as Foreman in the 4TS alongwith others, that too without recruitment rules with effect from 18.01.2006. On 18.05.2005, the Integrated Headquarters (IHQ) of Ministry of Defence had clarified that no promotion can be made in the 4TS without notifying the recruitment rules and



seniority in the grade of Assistant Foreman is to be reckoned from the feeder grade of Chargeman-I. The applicant requested the 3rd respondent to treat his promotion to the post of Assistant Foreman as Senior Foreman in the 3TS or as Foreman in the 4TS since both are same posts with the same salary. O.A. No. 666/2008 filed by the applicant was partly allowed with a direction to dispose of the representations of the applicant in a fair, just and non-discriminatory manner keeping in mind the spirit of the 4TS.

3. The representations of the applicant requesting for promotion to the grade of Foreman in the 3TS with effect from 11.03.2003 was rejected vide impugned order dated 11.02.2011 at Annexure A-28. Aggrieved, the applicant has filed this O.A. for the following reliefs:

- "a) Call for the records connected with the case;
- b) Set aside Annexure A-28 as it is illegal, wrong and arbitrary.
- c) Declare that the applicant ought to have been promoted as senior Foreman on 11.03.2003 since he was eligible and qualified for the post and there was vacancy and the DPC recommended his promotion to the next higher grade.
- d) Declare that the respondents 1 to 4 had committed a serious mistake in Annexure A-9 by promoting the applicant to the grade of Assistant Foreman, without any Recruitment Rules.
- e) Declare that promotion and posting can be granted under the newly introduced 4 tier Aviation Technical Supervisory Cadre of Indian Navy only after the notification of the Recruitment Rules in the respective grades.
- f) Declare that the promotions granted under the 4 tier structure under a wrong impression in 2003 should be treated as a promotion under the 3 tier structure in the corresponding grade, on the basis of the availability of the vacancies.
- g) Direct the respondents 1 to 4 to treat the promotion granted to the applicant as Assistant Foreman in the 4 tier structure w.e.f. 11.03.2003 should be treated as promotion to the post of Senior Foreman in the 3 tier structure since there was vacancy and he was eligible and qualified for the same as admitted in Annexure A-7.
- h) Direct the respondents to grant the applicant all service



benefits including seniority in the grade of Senior Foreman w.e.f. 11.03.2003 by treating his promotion as Assistant Foreman, as promotion to the post of Senior Foreman (re-designated as Foreman).

i) Grant such other reliefs as this Hon'ble Tribunal may deem fit, just and proper in the facts and circumstances of the case."

4. The applicant contended that he was eligible for promotion to the post of Senior Foreman in the 3TS; he could not be promoted only because of the introduction of the 4TS which in effect is not implemented and the 3TS is back in position. Hence the stand of the respondents that he could not be promoted in the 3TS in the year 2003 is not sustainable. The post of Assistant Foreman to which he was promoted became non est on reverting to the 3TS. Therefore, the promotion granted to him as Assistant Foreman with effect from 11.03.2003 by Annexure A-9 order dated 25.03.2003 ought to be treated as promotion to the grade of Foreman in the 4TS. The applicant ought to have been promoted as Senior Foreman with effect from 01.01.2003 as there was a vacancy of Senior Foreman in the trade of the applicant lying vacant from 22.04.1999 due to non availability of qualified candidates and as he became eligible to be promoted as Senior Foreman on 26.07.2002 as per the existing recruitment rules. The applicant was promoted as Foreman with effect from 18.01.2006 without notifying the recruitment rules. This promotion could have been made with effect from 01.01.2003. Due to non-feasance and mal-feasance on the part of the respondents, the applicant lost his chance of promotion to the post of Foreman with effect from 01.01.2003. Had he been promoted at the right time, he would have been the senior most Foreman and would have been eligible to be promoted to the post of Civilian Technical Officer and other higher posts earlier than other Foremen in different trades.

5. The respondents in their reply statement submitted that the applicant

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had got promotion to the post of Assistant Foreman on regular basis with effect from 11.03.2003 and also to the grade of Foreman with effect from 18.01.2006. As directed by this Tribunal in O.A. No. 666/2008 dated 01.10.2009, the respondents had examined his representations. It was found by the respondents that the contention of the applicant that, had the 3TS continued, he would have been promoted to the post of Senior Foreman in the 3TS equivalent to Foreman in the 4TS and therefore, the promotion granted to him as Assistant Foreman is to be treated as Foreman is not sustainable. The respondents are bound to follow the policy decisions taken by the competent authority from time to time. No DPC has been convened for promotion in the 3TS from the date of receipt of the Government of India letter dated 26.12.2001 introducing the 4TS till receipt of IHQ letter dated 18.05.2005. The promotion effected vide Annexure A-25 is from the panel for promotion recommended by the DPC conducted in the year 2001.

6. We have heard Mr. S. Radhakrishnan, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC appearing for the respondents and perused the records.

7. The sanction of the President for authorisation of the revised pay scale and the 4TS was conveyed vide Annexure A-3 order dated 26.12.2001. Although it was effective from the date of issue, the benefit of the sanction would be admissible from the date of actual placement of the individuals in different grades on restructuring. The respondents could not get the recruitment rules notified for the posts in the 4TS but they went ahead with promotion to the posts in the 4TS on obtaining one time exemption pending finalisation of the recruitment rules. This Tribunal had observed in the common order in O.A. Nos. 656/03 and 842/03 that the respondents should not have gone ahead with



promotions in this manner and held that all promotions which have been effected de hors the recruitment rules as ad hoc till the notification of the recruitment rules. Meanwhile, vide order dated 18.05.2005, the respondents had decided that till notification of the new recruitment rules promotion in the cadre of Foreman in the 4TS (Sr. Foreman in the 3TS) should continue as previously in the 3TS (old RRs) and that no further promotion should be made to the post of Assistant Foreman and that seniority in the grade of Chargeman-I should be taken for promotion and that the number of vacancies would be limited to the number of posts in the 3TS. Thus, after the so called implementation of the 4TS on 26.12.2001, the post of Assistant Foreman which distinguished the 4TS from the 3TS stood removed from the scene and the 3TS with its posts with new nomenclature and old recruitment rules remained intact. The fact of the matter is that the 4TS, sans recruitment rules, was never truly implemented. Therefore, the 3TS was not replaced at all by the 4TS.

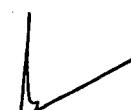
8. Further, as per Annexure A-25 order, the respondents had promoted a Senior Chargeman (AL) as Foreman (AL) (Rs. 5000-9000) in the 3TS on 26.02.2002, after the so called implementation of 4TS on 26.12.2001. The contention of the respondents in this regard is that the said promotion was from the panel for promotion recommended by the DPC conducted in the year, 2001, i.e. prior to the notification of the 4TS. In Annexure A-13 letter dated 12.12.2003, the respondents have stated that after implementation of the 4TS vide order dated 26.12.2001, the post of Senior Foreman does not exist in any of the units. If that is so, the post of Foreman (Rs. 5000-9000) also cannot exist in 4TS. But they made promotion precisely to that post on 26.02.2002, i.e., after the introduction of the 4TS on 26.12.2001. There was a vacancy of the Senior Foreman also in the 3TS lying vacant since 22.04.1999 in the



absence of qualified candidates. The applicant was eligible for that post on 26.07.2002. The material point is whether the posts/vacancies in the 3TS are available after 26.12.2011. If a Senior Chargeman can be promoted as Foreman in the 3TS, after the so called implementation of the 4TS, it is plain discrimination not to promote the applicant as Senior Foreman in the 3TS likewise.

9. The applicant was promoted as Assistant Foreman in the 4TS from the post of Foreman in 3TS (Rs. 5500-9000) equated with Chargeman-1 (Rs. 5500-9000) in the 4TS on 11.03.2003. The raison detre for promotions de hors the recruitment rules in the 4TS was lost when the recruitment rules were not finalised within a reasonable time of one or two years. The promotions which have been effected de hors the recruitment rules on the strength of one time exemption pending finalisation of recruitment rules were to be treated as ad hoc. Therefore, the contention of the respondents that the applicant was promoted as Assistant Foreman on regular basis with effect from 11.03.2003 is not tenable, applying the ratio of the decisions of this Tribunal in the common order dated 13.04.2006 in O.A Nos. 656/03 and 842/03. The recruitment rules are not finalised even today, 11 years after the so called implementation of the 4TS as per recommendations of the V CPC and 6 years after the implementation of the VI CPC.

10. It is submitted by the respondents that no DPC has been convened for promotion in the 3TS from the date of receipt of the Government order dated 26.12.2001 in 2002 till the receipt of IHQ letter dated 18.05.2005 and that they have followed the policy decision taken by the Government or the competent authority. This stand of the respondents betrays a steadfast refusal to keep in mind the spirit of 4TS to provide better promotional opportunities and to see



the discrimination against the applicant and to apply mind to the grievance of the applicant about loss of three years service in the post of Foreman/Senior Foreman on account of the inability of the respondents to implement the 4TS properly.

11. Vide order dated 18.05.2005, the vacancies at the level of Foreman in the 4TS (Senior Foreman in the 3TS) were to be filled up through promotion as per the recruitment rules of Senior Foreman in the 3TS. The applicant was promoted as Foreman in the 4TS (Senior Foreman in the 3TS) regularly as per old recruitment rules on 18.01.2006 by reckoning his seniority as Chargeman-I in the 4TS equated with Foreman in the 3TS. As per the existing recruitment rules, the applicant was eligible to get promoted as Senior Foreman in the 3TS or as Foreman in the 4TS in March, 2003. The promotion as Assistant Foreman in the 4TS with effect from 11.03.2003 de hors the recruitment rules on the strength of one time exemption pending finalisation of recruitment rules, which are not yet finalised even today cannot deprive the applicant of the promotion to the post of Senior Foreman/Foreman as per the recruitment rules for Senior Foreman. The respondents promoted him as Foreman in the 4TS on the basis of the recruitment rules for Senior Foreman on 18.01.2006. The 4TS which was recommended by the V CPC and accepted by the Government of India was meant to provide better promotional opportunities for the technical supervisory cadres but it turned into a snare at the hands of the respondents to snatch away the existing promotional opportunity for the applicant. The recommendations of the V CPC is unwittingly abused by the respondents to achieve exactly the opposite of the recommendations. The applicant would have been better off, without the more beneficial of 4TS. The irony of the situation should have engaged the attention of the respondents for remedial action.

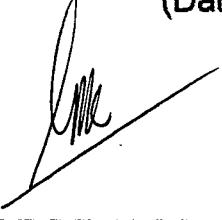


12. The rejection of the request for promotion of the applicant to the post of Foreman in the 4TS / Senior Foreman in the 3TS with effect from 11.03.2003 disregarding the spirit of the 4TS recommended by the V CPC is arbitrary, discriminatory and illegal. Instead of rectifying the mistake on the part of the respondents in unwittingly perpetuating a grave injustice on the applicant by depriving him of 3 years service in the cadre of Foreman/Senior Foreman they cling to the untenable technicality of regular promotion as Assistant Foreman, on the strength of one time exemption, without fulfilling the condition of notifying the recruitment rules, killing the spirit of the 4TS which they most illogically seek to implement on the basis of the recruitment rules of the 3TS. Hence, in the interest of justice, this O.A deserves to be allowed. Accordingly it is ordered as under.

13. Annexure A-28 is set aside. The respondents 1 to 4 are directed to treat the promotion granted to the applicant as Assistant Foreman in the 4TS with effect from 11.03.2003 as promotion to the post of Senior Foreman in the 3TS and to grant the applicant all service benefits including seniority in the grade of Senior Foreman with effect from 11.03.2003 by treating his promotion as Assistant Foreman as promotion to the post of Senior Foreman (re-designated as Foreman). Appropriate orders in this regard should be issued within a period of two months from the date of receipt of a copy of this order.

No costs.

(Dated, the 23rd March, 2012)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.