

**Central Administrative Tribunal
Ernakulam Bench**

OA No.267/2012

Wednesday, this the 17th day of June, 2015

CORAM

HON'BLE MR.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE MR.R.RAMANUJAM, ADMINISTRATIVE MEMBER

Renjith C.P., 45 years
S/o N. Padmanabhan Nair
Chargeman (Mech) at Faculty of
Mechanical Engineering
Indian Naval Academy
Ezhimala-670 310.
Residing at Qrs. No.120, Type III,
CERA, Indian Naval Academy,
Ezhimala, Kannur.

Applicant

(By Advocate: Mr. M.R.Hariraj)

Versus

1. Union of India represented by
Secretary to Government
Ministry of Defence, New Delhi.
2. The Chief of the Naval Staff
Integrated Headquarters of MOD (Navy) (PDNAI)
New Delhi 110 066
3. Flag Officer Commanding in Chief
Southern Naval Command, Kochi 682 004.
4. Director General, Naval Armament Inspectorate
Integrated Headquarters of MOD (Navy) (PDNAI)
New Delhi 110 066
5. Joint Director, Naval Armament Inspectorate
Integrated Headquarters of MOD (Navy) (PDNAI)
New Delhi 110 066.

Respondents

(By Advocate: Mr.N. Anil Kumar, Sr. PCGC)



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O R D E R

By Hon'ble Mr.R.Ramanujam, Administrative Member

Applicant is aggrieved by the refusal of the respondents to consider him for promotion to the post of Foreman (Mechanical) at Indian Naval Academy (INA) in Ezhimala. The applicant had commenced service as senior Chargeman on 26.12.1989 in the Naval Armament Inspectorate, Mumbai. This post was later re-designated as Chargeman-II (CM-II). In April 2000, the applicant was transferred and posted to Naval Armament Inspectorate, Kochi [NAI(K)]. By letter dated 15.1.2009, the third respondent informed the second respondent that one post of Foreman (Mech.) was required to be filled up urgently at the INA, Ezhimala. Since no supervisor in the trade was available, it was requested that the applicant might be transferred to Ezhimala on administrative grounds as the service of a supervisor in the mechanical trade was most urgently needed at Ezhimala. It was also mentioned that the applicant was the only volunteer for Ezhimala in the above trade and that he had agreed to accept the post of CM-II (M) although the vacancy was of Foreman (Mech.). The proposal for transfer was approved in principle by the competent authority on permanent absorption basis at Ezhimala. Technical resignation from the applicant was sought along with an undertaking that he was willing to get absorbed with loss of seniority (Annexure A7). Following this, Annexure A9 order was issued on 9.12.2009 accepting his technical resignation from NAI cadre and directing him to join the post of CM-II in INA Ezhimala w.e.f. 10.12.2009 (Annexure A9).

2. The applicant submits that although he was appointed as CM-II he has been working and carrying out the duties of Foreman in INA Ezhimala. He submitted Annexure A10 representation for inclusion of his name in the forthcoming DPC for promotion to the post of Foreman (Mech.). His representation was rejected by Annexure A11 impugned communication stating that as per the existing Recruitment Rules, the eligibility criteria for promotion to the post of Assistant Foreman was 3 years' qualifying service in the grade of CM-I and that the applicant had not completed the requisite qualifying service



(Annexure A11). The applicant submits that following the recommendations of 6th CPC, CM-II and CM-I have been merged into a single grade as CM in the pay band of Rs.9400-3400 with Grade Pay of Rs.4200. Similarly the post of Assistant Forman and Foreman have been merged and re-designated as Foreman in the pay band of Rs.9400-34800 with Grade Pay of Rs.4600. The applicant claims that he had already cleared the departmental qualifying test for Assistant Foreman in July 2009. As for the qualifying service, he had completed the requisite minimum of 3 years on 1.1.2009 itself reckoning his past service before absorption in INA Ezhimala. Even on the date of his transfer he was fully qualified for appointment to the senior post of Foreman (Mech.) at INA Ezhimala. The applicant also subsequently cleared the departmental qualifying test for promotion to the post of Foreman (Mech.) on 30.12.2011. A true copy of the order dated 30.1.2012 issued by the Administrative Officer (Civilian) has been placed as Annexure A14. Applicant contends that the refusal of the respondents to consider him for promotion is unjust, unfair, illegal, arbitrary and violative of Articles 14, and 16 of the Constitution of India.

3. The respondents resist the claim pointing out that the applicant had agreed to join INA Ezhimala with zero seniority. As per his acceptance, necessary orders had already been issued to strike off his name from the strength of NAI Kochi. Since he had given his technical resignation from NAI cadre forgoing his seniority therein and accepted the post of CM-II in INA Ezhimala, he could not stake his claim for promotion to the post of Foreman now. His motive in accepting the absorption in INA Ezhimala appears to avoid transfer out of his home State as the present post under Southern Naval Command is available at INA Ezhimala alone and he could spend his remaining service there. He has to complete 3 years of compulsory service in Ezhimala to become eligible for promotion to the post of CM-I. He has to complete 3 years of satisfactory service to become eligible for promotion as Assistant Foreman and another 3 years thereafter for promotion as Foreman (Mech.). He cannot be given promotion two levels above his present grade in violation of the

Recruitment Rules.

4. After filing rejoinder to the reply on 24.6.2012, the applicant further submitted MA 633/13 along with Annexure A15 document which is a clarification issued by Integrated Hqs of the Ministry of Defence (Navy), Directorate of Civilian Personnel regarding the conduct of DPCs in the merged Grades in the Navy. In para 5 of this document, it has been stated as follows:-

"Keeping in view the above circumstances and the fact that promotions, when carried out in the revised 2-tier structure should not violate the provisions of the existing recruitment rules, which are statutory in nature, the following methodology of promotions is recommended:-

S.No.	Name of the post	% of posts to be filled by promotion	Feeder Grade	Qualifying Service	DQE
I	Foreman	75.00%	Chargeman (Erstwhile CM-I and CM-II)	Three years	Erstwhile CM-I to APM

Note: The recommendation on the percentage of posts and DQE for the post of Foreman is based on the provisions for erstwhile AFM in the existing RRs.

5. The respondents however contend that there is only one post in INA Ezhimala where the applicant has been absorbed as CM. There is, at present, no post of Foreman (Mech.) available for promotion. The applicant contests this claim with information he had obtained under the RTI Act on 1.12.2010 (Annexure A18) wherein it has clearly been mentioned that one post of Foreman (Mech.) has been sanctioned at INA Ezhimala and a Chargeman has been posted against that vacancy on request with loss of seniority. It has also been mentioned therein that 3 years' service in the grade of CM-I and passing DQT (departmental Qualifying Test) was required for promotion to the grade of Chargeman.

6. Heard the learned counsels for the applicant and the respondents. The limited question in this case is whether the applicant, in agreeing to forfeit his seniority, had also forfeited his qualifying service for promotion to the next higher level. It is not disputed that based on 6th CPC pay scales, Foreman



(Mech.) is the next higher level over Chargeman. It is also clear from Annexure A15 that the requisite qualifying service for promotion from Chargeman to Foreman is 3 years along with a pass in DQT. It is also admitted that there was only one post of Foreman (Mech.) in INA Ezhimala against which the applicant had been posted as CM-II initially. We desired to ascertain from the learned counsel for the respondents whether there was any specific rule or executive instructions regarding the impact of loss of seniority on qualifying service. He was unable to refer us to any such document. In the absence of any statutory provisions to the contrary, it stands to reason that loss of seniority at the time of absorption would only mean that the person concerned would be placed last below all others who were already working at that level. When promotions are considered he would not be able to claim an out of turn promotion over those above him on the basis of his previous experience. It could never mean that such a person would not be considered to have had any previous experience at all. As a matter of fact, recruitment rules/executive instructions often provide for a situation when a junior has more qualifying service than a senior and allow relaxation in the requisite qualifying service to the seniors to a certain extent.

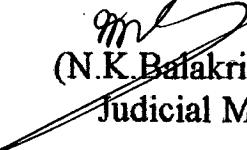
7. In this case admittedly, the applicant is the only person at the level of CM who is eligible for promotion to the post of Foreman. The fact that he has cleared DQT is not in dispute. We therefore find no merit in the respondents' contention that since the applicant was absorbed as CM, the post of Foreman stood irretrievably downgraded as CM. This is contrary to facts as no formal order to downgrade or abolish the post of Foremen (Mech.) seems to have been issued. The applicant is therefore correct in contending that while he has been working as Chargeman against a higher post, the higher post continued to exist. He is also right in claiming that he should be considered for promotion to the higher post as he fulfills the eligibility conditions.

8. In view of the aforesaid position, we are satisfied that the applicant must be considered for promotion to the post of Foreman (Mechanical), more so

when no other person above him is available for such promotion. No administrative reason for not considering such a promotion has been brought on record. The respondents are, therefore, directed to consider the case of the applicant for promotion by following the due procedure. This shall be completed within the next three months.

9. OA is allowed accordingly. No order as to costs.


(R. Ramanujam)
Administrative Member


(N.K. Balakrishnan)
Judicial Member

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