

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NOs.271/2002 AND 653/2002

Monday, this the 31st day of May, 2004.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

O.A.271/2002

V.Gopakumar,
Pipe Fitter HS-1,
Naval Ship Repair Yard,
Naval Base, Cochin. - Applicant

By Advocate Mr S.Radhakrishnan

Vs

1. Flag Officer Commanding-in-Chief,
Southern Naval Command,
Kochi-4.
- 2., Union of India represented by
the Secretary to Government of India,
Ministry of Defence,
New Delhi.
3. Chief Staff Officer(P&A),
Head Quarters,
Southern Naval Command,
Kochi-4. - Respondents

By Advocate Mr C.Rajendran, SCGSC

O.A.653/2002

N.P.Paul,
ICE Fitter HS.I
ICE Shop, Naval Ship Repair Yard,
Southern Naval Command,
Kochi-682 004. - Applicant

By Advocate Anil R Nair

Vs

1. Union of India represented by
its Secretary,
2. Flag Officer Commanding-in-Chief,
Headquarters,
Southern Naval Command,
Kochi-682 004.

3. V.Gopakumar,
Pipe Fitter HS.I,
PP&C, Naval Ship Repair Yard,
Southern Naval Command,
Kochi-4.
4. The Chief Staff Officer
(Personnel & Administration),
Naval Base, Kochi.
5. The Commodore Superintendent,
NSRY,
Kochi.

- Respondents

By Advocate Mr C.Rajendran, SCGSC(for R.1-2 & 4-5)

By Advocate Mr S.Radhakrishnan(for R-3)

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The Review Application No.19/2002 in O.A.271/2002 filed by Shri N.P.Paul has been allowed as per this Tribunal's order dated 31.5.2004. Accordingly, this Tribunal's order in O.A.271/2002 dated 7.5.2002 has been reviewed and the O.A. has been restored.

2. A connected case, O.A.653/2002, has also been filed by the review applicant in R.A.No.19/2002 in O.A.271/2002 impleading, among others, Shri V.Gopakumar, the applicant in O.A.271/2002 as respondent No.3. Basically, the issues in O.A.271/2002 and O.A.653/2002 turn on the filling up of the vacancy of Senior Chargeman(PP&C)(Engg) caused by the compulsory retirement of one Shri S.Radhakrishna Pillai with effect from 29.1.2002. In pursuance of this Tribunal's order in O.A.271/2002, Shri B.Gopakumar, applicant in O.A.271/2002 and third respondent in O.A.653/2002, had been promoted on notional basis with effect from 7.3.2002 in the place of Shri

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S.Radhakrishna Pillai, Senior Chargeman(PP&C)(Engg) who was compulsorily retired from service. In O.A.653/2002, Shri N.P.Paul claiming to be the seniormost in the feeder category is aggrieved by the reposting of Shri B.Gopakumar impleaded as third respondent in the O.A. on the ground that the respondents' action is not in accordance with the relevant recruitment rules.

3. Since the two cases are based on common facts, these are taken up for disposal by a common order as agreed to by the parties.

4. We have heard Shri S.Radhakrishnan, learned for the applicant and the third respondent in O.A.271/2002 and O.A.653/2002 respectively, Shri Anil R.Nair, learned counsel for the applicant in O.A.653/2002 and Shri C.Rajendran, the SCGSC.

5. The relevant facts to be considered for settling the point at issue are: One Shri Radhakrishna Pillai, Senior Chargeman(PP&C)(Engg) was removed from service on 14.12.1998. Shri V.Gopakumar(referred to as Gopakumar hereinafter for convenience) who is the applicant in O.A.271/2002 and third respondent in O.A.653/2002 having been trade tested and being the most eligible candidate in the feeder category(Pipe Fitter HS.I) for Senior Chargeman(PP&C)(Engg) at the relevant time, was promoted and posted on 6.7.99 in the vacancy caused by Radhakrishna Pillai's removal from service subject to the final decision in cases, if any, pending before the C.A.T.

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Gopakumar continued in the post for well over 2 years. The Tribunal on considering Radhakrishna Pillai's O.A.799/1999 ordered his reinstatement with all consequential benefits leaving the respondents at liberty to conclude the disciplinary proceedings after complying with the provisions of Rule 14(21)(a) of the CCS(CCA) Rules. On reinstatement of Radhakrishna Pillai with effect from 14.8.2001, Gopakumar was reverted to his substantive post of Pipe Fitter, HS-I. Meanwhile, Shri N.P.Paul(referred to as Paul hereinafter for convenience), the applicant in O.A.653/2002 who has been in the grade of ICE Fitter HS-I since 1993 became test qualified in August 2000. Radhakrishna Pillai was eventually compulsorily retired from service leaving the post of Senior Chargeman, (PP&C)(Engg) held by him vacant with effect from 6.3.2002(vide order dated 29.1.2002). Both Gopakumar, who had been holding the higher post during the interregnum between Radhakrishna Pillai's removal from service and reinstatement and Paul, who had been in the feeder category since 1993, made individual representations for promotion to the said vacant post vide A-7 dated 1.4.2002 in O.A.271/2002 and A-5 dated 11.3.2002 in O.A.653/2002. Gopakumar filed O.A.271/2002 thereafter and the Tribunal on the basis of the pleadings and arguments in the O.A. upheld Gopakumar's claim. This order has now been reviewed and the issue raised by Gopakumar is wide open again. Paul who was not impleaded in O.A.271/2002 filed O.A.653/2002 claiming that he is senior to Gopakumar in the feeder category(ICE Fitter HS.I) for the promotional post of Senior Chargeman (PP&C)(Engg). According to Paul, he became ICE Fitter HS-I on 6.8.93(A-2 in O.A.653/2002) and

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qualified in the departmental qualifying test held on 4.8.2000 while Gopakumar joined the feeder category of Pipe Fitter HS-I only in 1995 though he was test qualified in 1998. According to Paul, since a fresh vacancy arose when Radhakrishna Pillai was compulsorily retired, the same should have been filled up by promoting him in accordance with relevant recruitment rules(A-4 in O.A.653/2002). The following reliefs are prayed for in O.A.653/2002:

- i) to quash A-1 promotion order;
- ii) to direct the 2nd respondent to promote the applicant as Senior Chargeman(PP&C)(Engg) Grade-II with effect from 29.1.2002.
- iii) In the alternative, to quash A-1 and A-9 and to direct the respondents to create a super numerary post of Senior Chargeman(PP&C)(Engg) Grade-II and to promote the applicant to the same with effect from the date on which promotion as per A-1 was granted to the 3rd respondent.

6. Shri S.Radhakrishnan, learned counsel for Gopakumar, the applicant in O.A.271/2002 and third respondent in O.A.653/2002 would contend that Gopakumar had been found eligible for promotion and that he had continued in that post for over 2 years. According to the learned counsel Gopakumar's earlier promotion was not ad hoc or temporary. It was promotion against an existing vacancy. Though he was reverted when the original incumbent was reinstated, he, having been promoted earlier, ought not to have been reverted in the

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first place and, in any event, when the original incumbent was retired compulsorily he (Gopakumar) ought to have been allowed to continue in that post. Learned counsel would also point out that having qualified in the departmental qualifying test as early as in 1998 and having been holding the higher post even before Paul, the applicant in O.A.653/2002 ^{who} was test ^{only} qualified/ in August 2000, Gopakumar was senior on the date on which the vacancy of Senior Chargeman (PP&C) (Engg) arose on Radhakrishna Pillai's compulsory retirement.

7. Shri Anil R. Nair, learned counsel for Paul, the applicant in O.A.653/2002, would submit that the applicant was senior to the third respondent in the feeder category and that the third respondent's promotion to Senior Chargeman (PP&C) (Engg) was against a vacancy caused by the removal of Radhakrishna Pillai from service but subject to the final decision of the Tribunal in any related case pending before it. Since the final decision of the Tribunal in O.A.799/99 filed by Radhakrishna Pillai was in his favour and since his reinstatement with all consequential benefits was ordered, he came to reoccupy the same post and the 3rd respondent was reverted. Both the applicant and the third respondent had represented for granting promotion or reposting, as the case may be. Applicant's seniority position and the fact of his having qualified in the departmental qualifying test were not brought to the notice of the Tribunal earlier while O.A.271/2002 was taken up. The applicant was a necessary party but he was not impleaded in O.A.271/2002. In any case, when Radhakrishna Pillai was retired compulsorily, a

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new vacancy had arisen which ought to have been given to the applicant(Paul) who was the seniormost test qualified candidate in the feeder category as on the relevant date. The third respondent's earlier appointment ceased to be effective and hence he could not claim any right on the strength of his earlier promotion. The learned counsel would invite our attention to a number of decisions to support his contention that seniority cannot be decided on the basis of date of passing the qualifying test and that as on the date of arisal of vacancy the qualified senior would be eligible for consideration for promotion. In the instant case, the applicant was the eligible senior and therefore, he should be considered for promotion to the post of Senior Chargeman(PP&C)(Engg) with effect from the date of arisal of that vacancy on account of Radhakrishna Pillai's compulsory retirement, the learned counsel would urge.

8. Shri C.Rajendran, learned SCGSC would rely on the reply statement filed by the official respondents and would contend that Gopakumar was promoted and posted as Senior Chargeman in the first instance when Radhakrishna Pillai was removed from service for the reason that he(Gopakumar) was the seniormost test qualified candidate available at that time. i.e. in December, 1998. His appointment, however, was subject to the outcome of the litigation, if any, pending before the Court. Logically, therefore, when Radhakrishna Pillai was ordered to be reinstated as per this Tribunal's order in O.A.799/99, Gopakumar had to be reverted. The reappointment of Gopakumar was as per the direction of the

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Tribunal in O.A.271/2002. According to the counsel, there was no need to convene another DPC for promoting Gopakumar as he had already been considered by the DPC in 1999 and as he had held the post for more than 2 years. The post of Senior Chargeman(PP&C)(Engg) is a selection post, according to the learned counsel; and when the DPC met in 1999, this aspect was duly noted by it. The learned SCGSC has, however, pointed out that in view of the respondents' statement in paragraph 6 of the additional reply statement in O.A.653/2002 the applicant (Paul) was the seniormost qualified candidate for consideration for filling up the vacancy at the time of compulsory retirement of Radhakrishna Pillai.

9. On a consideration of the relevant facts and pleadings available on record and having regard to the contentions put forward by the learned counsel for the parties and the learned SCGSC, we find that the question to be considered is is two fold:

a) whether a fresh vacancy of Senior Chargeman(PP&C)(Engg) arose on the compulsory retirement of Radhakrishna Pillai.

b) If a fresh vacancy arose, which of the two aspiring candidates, Gopakumar or Paul, is senior for the purpose of promotion to the post of Senior Chargemen(PP&C)(Engg).

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10. At the outset, it has to be noted that there is only one post of Senior Chargeman(P&P) Engg. We find that when Radhakrishna Pillai was removed from service, a vacancy of Senior Chargeman(PP&C) Engg. arose and that Gopakumar the seniormost trade tested candidate in the feeder category was promoted. But his promotion was subject to the outcome of the litigation, if any, pending before the Tribunal. O.A.799/99 filed by Radhakrishna Pillai challenging his removal from service was disposed of by this Tribunal ordering his reinstatement. Thus the order of removal from service became non est and Radhakrishna Pillai was reinstated in the post of Senior Chargemen(PP &C) Engg. Gopakumar's conditional promotion ceased to be effective as the vacancy against which he had been promoted no longer existed and he was reverted to the post of Pipe Fitter H.S.I. The disciplinary proceedings against Radhakrishna Pillai were duly concluded and he was awarded the punishment of compulsory retirement. We are not inclined to accept the proposition canvassed by the learned counsel for Gopakumar that no fresh vacancy arose on the compulsory retirement of Radhakrishna Pillai and that therefore Gopakumar who had been continuing in the post on regular promotion against the existing vacancy in 1999 should be allowed to continue in the same post on Radhakrishna Pillai's exit on compulsory retirement. We are of the considered opinion that the moment Radhakrishna Pillai was compulsorily retired with effect from 6.3.2002, a fresh vacancy arose and that it ought to have been filled in accordance with the recruitment rules in force and also keeping in view the changed factual situation. In other

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words, the seniormost eligible candidate as on the relevant date had to be considered for promotion.

11. That takes us to the second limb of the issue as to which of the two contenders, Gopakumar and Paul, is senior for purposes of promotion to the post that fell vacant on Radhakrishna Pillai's compulsory retirement. We notice that in para 6 of the additional reply statement in O.A.653/2002, the official respondents have submitted:

"..... that the statement of the applicant that he was the seniormost qualified candidate for consideration to the vacancy at the time of compulsory retirement of Shri S.Radhakrishna Pillai is correct."

(emphasis supplied)

Thus the official respondents have no quarrel about the seniority and eligibility of Paul as on the date of compulsory retirement of Radhakrishna Pillai. We notice, however, that by A-8 representation dated 13.8.2002 Paul, the applicant in O.A.653/2002 and by A-4 representation dated 23.8.2001, Gopakumar the applicant in O.A.271/2002 had staked their claim for the post of Senior Chargeman(PP&C) Engg. From the official respondents' pleadings we find that Gopakumar's reposting was on account of this Tribunal's order dated 7.8.2002 in O.A.271/2002. The official respondents have conceded in O.A.653/2002 that Paul is the seniormost in the feeder category on the date of Radhakrishna Pillai's

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compulsory retirement. If that be so, the respondents could have considered Gopakumar's representation dated 23.8.2001 (referred as A-4 in O.A.271/2002) and Paul's representation dated 13.8.2002 (referred as A-8 in O.A.653/2002) and taken appropriate decision thereon. It is regrettable that the official respondents have not helped the Tribunal with the relevant facts regarding the admitted seniority of Paul though ~~heard~~ O.A.271/2002 was / several weeks after the individual representations were received from Gopakumar and Paul. The stand of Gopakumar, however, is that his seniority which was accepted and acted upon at the time of the original promotion as per A-1 order dated 6.7.99 should be recognised and that the fact that he had been successfully trade tested prior to Paul should be considered. We are not in agreement with this plea. Paul is senior since he was in the feeder category viz, ICE Fitter HS.I from 1993 whereas Gopakumar entered the feeder category viz, Pipe Fitter HS.I. in 1995 only. It is true that the fact of his having qualified in the trade test while Paul had not qualified gave Gopakumar at advantage when filling up the vacancy in 1999 on account of Radhakrishna Pillai's removal from service was considered. But that seniority position has undergone a change since during the interregnum Paul also qualified in the departmental qualifying test. Gopakumar's claim of seniority on account of his having been successfully trade tested before Paul and appointed when the vacancy arose in the first instance has no substance as seniority and eligibility as on the date of occurrence of the vacancy have to be considered vide AIR 1969 SC 1249, AIR 1970 SC 2178, 1992(3) SLR 532 (A.P) and 1991(1) KLT 337. Promotion

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to the higher cadre should be based on the qualification and seniority at the time of occurrence of vacancy. (Henry Gomez Vs Government of Kerala, 1993(2) KLT 884). Thus, Paul with his feeder cadre seniority and eligibility on account of having successfully undergone the departmental test definitely had a superior claim to promotion to the post of Senior Chargeman (PP&C) Engg. on 6.3.2002 when the vacancy of the post of Senior Chargeman(PP&C) Engg. occurred on account of Radhakrishna Pillai's compulsory retirement. In O.A.271/2002, this Tribunal was not in a position to consider the relevant facts as those were not brought to our notice. Now that the factual and legal position is clear, we hold that when Radhakrishna Pillai was compulsorily retired a fresh vacancy of the post of Senior Chargeman(PP&C) Engg. arose and that admittedly Paul the applicant in O.A.653/2002 was the seniormost eligible candidate in the feeder category. We therefore, hold that O.A.271/2002 is devoid of merit and that O.A.653/2002 has to be allowed.

12. On the facts discussed and for reasons stated in the foregoing paragraphs, we set aside the impugned orders A-1 and A-9 in O.A.653/2002 and allow the application. We direct the respondents to consider the applicant N.P.Paul for promotion to the post of Senior Chargeman(PP&C) Engineering Grade-II with effect from the date on which the said post fell vacant consequent on the compulsory retirement of Radhakrishna Pillai

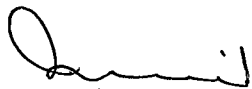
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with all consequential service benefits.

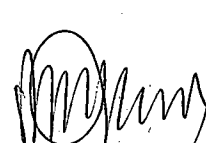
13. O.A.271/2002 is dismissed.

14. There is no order as to costs.

Dated, the 31st of May, 2004.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

trs

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.271/2002

Wednesday, this the 7th day of August, 2002.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

V.Gopakumar,
Pipe Fitter HS-1
Naval Ship Repair Yard,
Naval Base, Cochin.

.. Applicant

(By Advocate Sri S.Radhakrishnan)

vs.

1. Flag Officer Commanding in Chief,
Southern Naval Command, Kochi-4.
 2. Union of India represented by
The Secretary to Government of India,
Ministry of Defence,
New Delhi.
 3. Chief Staff Officer(P&A),
Head Quarters, Southern Naval Command,
Kochi-4.
- .. Respondents

(By Advocate Sri C.Rajendran, SGGSC)

The application having been heard on 7.8.2002 the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN:

The applicant, a Pipe Fitter HS-1 having been qualified in all respects and found fit for promotion, was promoted as Chargeman Grade-II by order dated 6.7.99(A-1). It was provided in the order that the appointment was subject to Court cases pending. While he was holding the post of Chargeman Grade-II, the impugned order dated 14.8.2001(A-2) was issued reverting the applicant as Pipe Fitter HS-I for the reason that one Shri S Radhakrishna Pillai, Senior

Chargeman(PP&C) Engineering, who had been removed from service and in whose place the applicant was appointed, has been reinstated in service. The applicant made a representation against his reversion which was turned down by A-4, however, indicating that the applicant would be considered for promotion as and when a vacancy of Senior Chargeman-II(PP&C) Engineering would become available. Shri S Radhakrishna Pillai has again been removed from service on compulsory retirement with effect from 29.1.2002. However, finding that the applicant is not being put back to the post of Chargeman and apprehending that the respondents might accommodate some other people and defeat the rights of the applicant, the applicant has filed this application for the following reliefs:

- a) Call for the records connected with the case and to quash A-2 and A-4 orders;
- b) Declare that the applicant is entitled to continue in the post of Senior Chargeman to which he was promoted by A-1 order;
- c) Declare that A-2 order is illegal for there is no valid reason for reversion;
- d) Declare that A-4 order is illegal for non-disclosure of reasons and non-application of mind.
- c) Direct the respondents to re-post the applicant as Senior Chargeman(PP&C) Engg. with effect from 14.8.2001 with all consequential benefits.

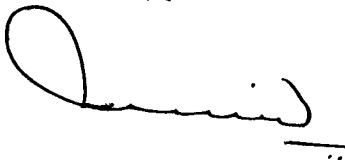
2. The respondents in their reply statement contend that the applicant having been trade tested and found suitable for promotion, his apprehension that he would have to undergo another trade test is ill-conceived and that the case of the applicant for promotion would be considered as and when a

vacancy would arise. The allegation that Shri Radhakrishna Pillai had been compulsorily retired, is not disputed. However, it is contended that Shri Radhakrishna Pillai is likely to challenge the compulsory retirement and one does not know what would be the fate of that litigation.

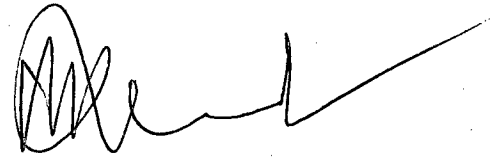
3. We have heard the learned counsel on either side and have perused the entire pleadings and other material placed on record. The fact that the applicant was in all respect eligible and suitable for promotion and that was why he was promoted as Chargeman-II(PP&C) Engg. under A-1 is not in dispute. It is also an undisputed fact that the reversion of the applicant by the impugned order A-1 become necessary for want of vacancy as the vacancy against which the applicant was promoted, ceased to exist with the coming back of Shri Radhakrishna Pillai. It is further an undisputed fact that Shri Radhakrishna Pillai has now been compulsorily retired. Therefore, a vacancy has arisen for the applicant to be put back to the post to which he was promoted by A-1 order. Since the applicant was in all respect eligible and suitable to hold the post of Chargeman, we find no reason why the applicant should not be appointed as Chargeman since a vacancy has now become available. The fact that Shri Radhakrishna Pillai may challenge the order of his compulsory retirement and may probably come back to service, should not be a reason which would stand in the way of the respondents promoting the applicant, as the post is vacant presently and would not be

left vacant even in the interest of service. If Sri Radhakrishna Pillai succeed in his litigation and would come back to service, appropriate action in accordance with the rules can be resorted to.

4. In the light of what is stated above, we dispose of this application with a direction to the respondents to promote the applicant as Chargeman Grade-II(Senior Chargeman PP&C Engineering) in the vacancy left by compulsory retirement of Sri Radhakrishna Pillai forthwith from the date on which Sri Radhakrishna Pillai was compulsorily retired. Necessary orders in that regard shall be passed by the competent authority within a period of one month from the date of receipt of copy of this order. There is no order as to costs.



(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)
VICE CHAIRMAN

/trs/

APPENDIX

APPLICANT'S ANNEXURES

1. Annexure A1 : True copy of the Order No.CS2760/23 dated 06.7.99 of the 3rd respondent.
2. Annexure A2 : True copy of the Order No.CS2760/23 dated 14.8.01 of the 3rd respondent.
3. Annexure A3 : True copy of the representation submitted by the applicant dated 23.8.01.
4. Annexure A4 : True copy of the Order No.CS2760/23 dated 09.10.01 of the 1st respondent.
5. Annexure A5 : True copy of the letter No.PP/01/5030 dated 18.08.01.
6. Annexure A6 : True copy of the Order No.CP(L)/5302/11 dated 29.01.02.
7. Annexure A7 : True copy of the representation submitted to the 1st respondent dated 01.4.2002.

RESPONDENTS ANNEXURES

1. Annexure R1 : True copy of order CS 2691/113(PC) dated 08 Aug 2001 issued by the 3rd respondent.

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