

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.282/09

Tuesday this the 15<sup>th</sup> day of June 2010

**C O R A M :**

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

K.A.Rajasekhara, Record Clerk, A/C.No.8332681,  
Pay & Accounts Office (Other Ranks),  
Defence Security Corps, Mill Road, Kannoor – 13.

...Applicant

(By Advocate Mr.V.Ajith Narayanan)

**V e r s u s**

1. Union of India represented by its Secretary,  
Ministry of Defence, New Delhi.
2. The Controller General of Defence Accounts,  
West Block – V, R.K.Puram, New Delhi.
3. The Controller of Defence Accounts,  
Annassalai, Teynampet, Chennai – 18.
4. The Deputy Controller of Defence Accounts (in charge),  
Pay & Accounts Office (Other Ranks), Defence Security Corps,  
Mill Road, Kannoor – 13. ...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 15<sup>th</sup> June 2010 this Tribunal  
on the same day delivered the following :-

**ORDER**

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER**

The applicant has filed this Original Application under Section 19 of  
the Administrative Tribunal Act, 1985, seeking the following reliefs :-

1. Direct the respondents to promote the applicant from the  
post of Record Clerk to the grade of Clerk with retrospective  
effect from 28.1.2004 the date of acquisition of required  
qualification for the said promotion with back wages and such

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other reliefs on the basis of the fact that he is a Scheduled Caste candidate and eligible for getting the benefit of 20% reservation category and there were number of vacancies for the grade of Clerk as on 28.1.2004.

2. Direct the 2<sup>nd</sup> respondent to take considered decision up on Annexure A-9 representation after proper application of mind with a speaking order and communicate the same to the applicant within a time frame.

3. To issue such the reliefs as this Hon'ble Tribunal may deem fit and proper in the factual circumstances of the case.

4. To award cost to the applicant from the respondents for the proceedings.

2. During the pendency of this Original Application, the respondents have filed a copy of their Letter No.AN/XI/11401/2009 dated 21.7.2009 (Annexure R-4) along with the reply affidavit promoting the applicant to the grade of Clerk with effect from 15.9.2008, with all consequential benefits at par with his juniors. The contention of the applicant is that while passing the aforesaid Annexure R-4 letter the respondents have not considered his Annexure A-9 representation dated 28.4.2008 (wrongly typed as 28.4.2009) for promotion as Clerk from the post of Record Clerk under 20% reservation category with retrospective effect from 2003 with back wages and such other benefits on the basis of the principles laid down in the judgment of the Hon'ble High Court of Kerala in State of Kerala Vs. Bhaskaran Pillai reported in 2003 (1) KLT 60 to the effect that if legitimate promotion of a candidate was not taken place and which was not due to his default, he is absolutely entitled for getting retrospective promotion with back wages and such other service benefits. The operative part of the said judgment is as under :-

"22. In short the normal rule must be that where there is no fault on



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the part of the officer concerned, he must be paid the monetary benefits due to him consequent to the retrospective promotion. In appropriate cases it could be denied to him for valid reasons. In the three categories of cases enumerated in Philomina such benefits cannot be denied to him. The dictum in Philomina cannot be held to be valid any more in view of the decisions of the Supreme Court referred above to the extent that it stipulates a rule of general application that no Government servant is entitled to be paid for work which he has not done. This conclusion appears to be inevitable in view of the subsequent declaration of law by the Supreme Court in the decisions referred above."

3. We have heard Shri.V.Ajith Narayanan for the applicant and Ms.Sheela on behalf of Shri.Sunil Jacob Jose,SCGSC for the respondents. It is seen that the Annexure R-4 letter dated 21.7.2009 has been issued by the respondents during the pendency of this Original Application. In the said letter there is no mention regarding the consideration of the applicant's aforesaid representation dated 28.4.2008. We, therefore, dispose of this Original Application with a direction to the 2<sup>nd</sup> respondent, namely, the Controller General of Defence Accounts, New Delhi, to consider his Annexure A-9 representation dated 28.4.2008 and pass a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order. The applicant shall by way of an additional representation supply the copy of the judgment in the case of State of Kerala Vs. Bhaskaran Pillai (supra) relied upon by him in his representation.

4. There shall be no order as to costs.

(Dated this the 15<sup>th</sup> day of June 2010)

  
**K.NOORJEHAN**  
**ADMINISTRATIVE MEMBER**

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

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