

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO.31/2001

Friday, this the 15th day of November, 2002.

CORAM;

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

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

V.V.varghese(Rtd.SNSO),  
17, Subhash Nagar,  
Edapally.P.O.  
Kochi-682 024.

- Applicant

By Advocate Mrs Anu Sivaraman

Vs

1. Union of India re. by  
it's Secretary,  
Ministry of Defence,  
New Delhi.

2. Chief of Naval Staff,  
(Directorate of Civilian Personnel),  
Naval Headquarters,  
New Delhi. - Respondents

By Advocate Mr C.Rajendran, SCGSC

The application having been heard on 24.9.2002 the Tribunal on  
15.11.2002 delivered the following:

O R D E R

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

The applicant in this case retired as Senior Naval Stores Officer, (SNSO for short) under the Southern Naval Command, Cochin on 31.5.94. The grievance in this application is against A-VII order dated 17.8.2000 of the 2nd respondent refusing to grant notional promotion to the applicant as Joint Director, Naval Stores. The applicant seeks for a direction

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to the respondents to refix his pensionary benefits in the scale of pay applicable to the post of Joint Director, Naval Stores with effect from 1.1.90 and for revision of pensionary benefits with effect from 1.1.96 as a result of redesignation of the post of Joint Director as Director.

2. The facts in brief are: The applicant had been initially appointed as Assistant Naval Store Officer in the year 1971. His seniority as Naval Store Officer vis-a-vis two direct recruits of 1981-82 was ordered to be restored vide Madras Bench of this Tribunal's order in O.A.No.41/87 dated 28.10.87. While a S.L.P. filed by the Department was pending before the Supreme Court without there being any interim orders, the Bombay Bench of the Tribunal ordered revision of seniority of Naval Stores Officers(NSO for short) as per order in O.A.No.127/87 dated 27.4.93 which led to revision of seniority list and review DPCs for promotion to the post of SNSO for 1987, 1990, 1991-92, 1992-93 and 1993-94. Yearwise panels for promotion to SNSO were drawn as per A-I order dated 1.12.95. As per A-2 order dated 10.4.96, the applicant was promoted as SNSO on proforma basis with effect from 1.4.87. Meanwhile, the applicant who had been promoted as SNSO on regular basis with effect from 2.9.93 had retired from service on superannuation with effect from 31.5.94. Having regard to that fact, arrears of pay and allowances as per A-2 orders dated 10.4.96 were limited to the period from 2.9.93. The applicant made an unsuccessful attempt seeking the arrears of pay and allowances from the date of his retrospective promotion vide this Tribunal's order in O.A.No.1546/97 dated 26.7.2000. It is to be noted that as a result of the review

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DPC, granting promotion to the applicant as SNSO with effect from 1.4.87, he superseded several of his seniors on account of his record of superior merit and ability. The SNSO was the feeder category for promotion as Joint Director. The IVth Pay Commission rationalised the posts of SNSO and Joint Director in the Naval Stores Organisation by giving the same scale of pay for both the posts. However, the seniormost amongst the SNSOs were being posted as Joint Directors. With the retrospective promotion granted with effect from 1.4.87, the applicant was the seniormost SNSO. His case is that he being the seniormost SNSO, would have been fully entitled to be posted as Joint Director(LS) in the vacancy that had arisen on 1.1.90 on retirement of the incumbent. The applicant preferred representation before the respondents seeking notional promotion to the post of Joint Director(LS) with effect from 1.1.90 as well as refixation of pay and pensionary benefits consequent on such promotion vide A-III dated 22.6.2000. Meanwhile, in the light of the Vth Pay Commission recommendations, the 1st respondent by A-IV order dated 5.8.99 redesignated the post of Joint Director as Director in the scale of Rs.14000-18300 and making the post of SNSO, the feeder category for promotion as Director. By A-V and A-VI orders the applicant's juniors were posted as Joint Directors and consequently they became entitled to refixation and pension in the revised scale applicable to the redesignated post of Director. In spite of the retrospective promotion, the applicant is not granted the monetary benefits to which he would have been entitled if proper refixation of pay and

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pension were effected in his case. However, by the impugned order A-VII dated 17.8.2000, the applicant's claim was rejected by the 2nd respondent. The following are the main reliefs sought:

(a) Call for the records leading to Annexure A-VII and quash the same.

(b) Direct the respondents to consider the claims of the applicant for promotion as Joint Director(LS) with effect from 1.1.1990 and to grant him all consequential benefits including refixation of pay and pension with effect from 1.1.1996.

(c) Direct the respondents to grant all monetary benefits to the applicant including refixation of pay and pension consequent to redesignation of the post of Joint Director with effect from 1.1.1996.

3. In their reply statement, the respondents have stated that the application is barred by limitation since the claim of notional seniority and retrospective promotion to the post of Joint Director and consequent financial benefits has been raised after a lapse of 5 years from the date the applicant was notionally promoted as SNSO. It was further stated that as the applicant had filed an O.A. No.1546/97 before this Tribunal for the very same relief which is claimed now and as the application was rejected by this Tribunal by order dated 26.7.2000, the present application is hit by the principle of

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resjudicata. According to the respondents, after the implementation of the IVth Pay Commission's recommendations, the post of SNSO and Joint Director were placed in identical pay scale of Rs.3700-5000 and no SNSO and Joint Director was formally promoted as Joint Director by holding any DPC. Since the applicant's notional promotion as SNSO with effect from 1.4.87 after he retired from service in 1994 was itself fortuitous and was in consequence of an O.A. filed by other two incumbents, there was no basis for his claim. In any case, as no SNSO was promoted as Joint Director, no one was given any financial benefits of pay fixation. The applicant's claim for further benefits as a result of upgrading of the two posts of Joint Director as Director in the light of the Vth Pay Commission's recommendations is not tenable in view of the fact that the Recruitment Rules for the post of Director have not yet been approved and notified and that being so, the applicant was not entitled to any benefit.

4. Holding on to his basic contention, the applicant has filed a rejoinder. The averments and pleadings in the rejoinder have been stoutly denied by the respondents in their additional reply statement.

5. We have heard Smt. Anu Sivaraman, learned counsel for the applicant and Shri C.Rajendran, learned SCGSC for respondents. The learned counsel for applicant would submit that the applicant had a continuing cause of action since his pension is prejudicially affected. Since the claim in this O.A. pertains to the respondents' failure to allow him consequential promotion due to him and the resultant monetary

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benefits, there was no question of resjudicata in this case, learned counsel would urge. Had the respondents given effect to the Madras Bench of this Tribunal's order in O.A.No.41/87 fully and truly, the applicant would have got the benefit sought in this O.A., it is submitted by the counsel. Shri C.Rajendran, learned SCGSC would maintain that the applicant was aware of his retrospective promotion as per order dated 10.4.96 while the first representation was made on 22.6.2000. Relying on the contentions in the reply statement, learned SCGSC would argue that the applicant had no enforceable right to further promotion and refixation of pay and pension since no regular further promotion was made in the organisation.

6. At the outset, we find that though the applicant has raised claims regarding monetary benefits, in effect the thrust of this O.A. is refixation and revision of the applicant's pension and therefore, it cannot be technically held to be barred by limitation. Nor is the application hit by the principle of resjudicata. In this O.A., the applicant seeks benefits including monetary benefits by way of further promotion to the post of Joint Director and the redesignation thereof as Director with effect from 1.1.1996. What was considered in O.A.No.1546/97 was only the claim of monetary benefits in relation to the notional promotion as SNSO granted to the applicant with effect from 1.4.87. The principle of resjudicata would therefore apply only in respect of monetary benefit, the claim for which had already been adjudicated in the earlier O.A.

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7. The claim of the applicant in this O.A. is that as a logical consequence of the notional promotion granted to him as SNSO with effect from 1.4.87, he should have been promoted notionally as Joint Director with effect from 1.1.90 when a vacancy arose due to the retirement of the incumbent Shri O.N.Chowdhry. He also presses for the further claim for the benefit of revision of his pension on account of the redesignation of the post of Joint Director as Director with higher scale and making SNSO as the feeder grade for Director, in the light of the Vth Pay Commission's recommendations. In our considered opinion, none of the applicant's claims can be allowed. The applicant's claim for consideration for notional promotion as Joint Director could arise, if at all, only after 1.4.87 and not before 1.1.1990. By that time, it would appear, the IVth Pay Commission's recommendations were being implemented. The IVth Central Pay Commission recommended merger of the scales of SNSO and Joint Director. No DPC is seen to have been held in respect of promotion from SNSO to Joint Director after the scales of the pay of the feeder grade(SNSO) and the promotional grade(Joint Director) were merged. No such regular promotion has been shown to have taken place, although it is admitted that two seniormost SNSOs would be designated as Joint Directors since there were only two posts of Joint Director at the relevant time. In the circumstances, the retrospective placement of the applicant in a higher grade at a later date after his superannuation, cannot lead to further notional promotion, if no regular promotion had actually taken place. In view of this, the applicant's claim that had his seniority in the notional grade

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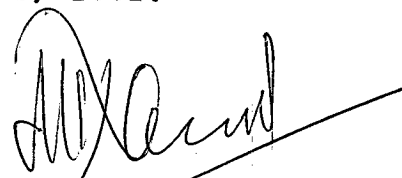
of SNSO allowed to him with effect from 1.4.87 been taken to its logical continuity, he would have been promoted as Joint Director in 1990 cannot be accepted. We also find that the averment of the respondents to the effect that the incumbent, whose retirement on 1.1.90 allegedly gave rise to a vacancy of Joint Director, had been promoted on the basis of the recommendations made by the DPC which was held prior to the issue of the Government order implementing the IVth Pay Commission's recommendations, has not been countered. We also find that A-V and A-VI orders are not promotion orders, but only posting orders. Thus, it would appear that no injustice has been caused to the applicant and that the impugned order A-7 cannot be faulted.

8. In the light of the above discussion, we hold that the application is devoid of merit and hence liable to be dismissed. Accordingly we dismiss the O.A., leaving the parties to bear their respective costs.

Dated, the 15th November, 2002.



T.N.T.NAYAR  
ADMINISTRATIVE MEMBER



A.V.HARIDASAN  
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures

1. A-I: True copy of the order of the 2nd respondent rejecting the applicant's claim dated 17.8.2000.
2. A-II: True copy of the order dated 10.4.96 issued by the 2nd respondent.
3. A-III: True copy of the representation of applicant dt.22.6.2000.
4. A-IV: True copy of the order of the 1st respondent dt.5.8.99.
5. A-V: True copy of the order posting applicant issued by the 2nd respondent dt.8.3.94.
6. A-VI: True copy of the order posting applicant issued by the 2nd respondent dt.28.5.99.