

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.361/2001

Monday, this the 29th day of September, 2003.

CORAM;

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

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

Chacko Varkey,
Civilian Motor Driver Grade II,
Base Victualling Yard,
Naval Base, Kochi-4. - Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India represented by
the Secretary to Government,
Ministry of Defence,
New Delhi.
2. The Chief of the Naval Staff,
Naval Headquarters,
Ministry of Defence,
Defence Headquarters P.O.
New Delhi.
3. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Naval Base, Kochi-4.
4. Lt.Sardar Singh,
INS Garuda,
Naval Base, Kochi-4.
5. Base Victualling Officer,
Base Victualling Yard,
Naval Base, Kochi-4.
6. V.P.Kannan,
Motor Driver Grade I,
C/o the Commanding Officer,
INS Venduruthy,
Naval Base, Kochi-4. - Respondents

By Advocate Mr C Rajendran, SCGSC for R.1 to 3 & 5

O R D E R

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

The applicant, a Civilian Motor Driver(CMD) Grade-II
in the scale of Rs.4000-6000 under the 3rd respondent is

aggrieved by the failure on the part of the respondents in considering him for promotion to the post of CMD Grade-I in the scale of Rs.4500-7000. According to him, though he was one of the seniormost CMDs Grade-II, he was declared not having qualified in successive trade tests held in pursuance of A-2, A-6 and A-8 memos solely because of the bias and malice of the 4th respondent who was a member of the Trade Testing Board (TTB) in all the trade tests. The applicant's case is that he had raised specific allegations of bias against the 4th respondent and made representations A-5 and A-9 in that regard, that the 4th respondent who was a member in successive TTB did not possess a valid driving licence when the latter conducted the first trade test on 7.4.99 leading to A-4 communication dated 2.5.99 declaring the trade test results and that the impugned orders are totally arbitrary, discriminatory and unconstitutional. It is alleged that the entire process of the trade test was vitiated and that the applicant who had been driving all types of vehicles for over 31 years had never given rise to any occasion for complaint about his driving skill. The applicant believes that it was on account of some past animosity that the 4th respondent deliberately failed the applicant each time. It is also canvassed by the applicant that as per A-1 promotion scheme for CMDs in Defence Establishment, the applicant as a Driver who had completed not less than 15 years of service and being one of the seniormost, was entitled to be placed in the higher grade earmarked for 20% of the total number of posts. Against the above back ground, the applicant has filed this O.A. seeking the following main reliefs:

- i) Call for the records leading to the issue of A-10 and A-11 and quash the same;
- ii) Call for the records leading to the issue of A-4 and quash the same to the extent it relates to the applicant and direct the respondents to consider the applicant for promotion on par with those who are included in A-4 and to grant the consequential benefits including arrears thereof;
- iii) Direct the respondents to grant the applicant the benefit of promotion as Civilian Motor Driver Grade I with effect from 1.1.1996 in terms of A-1 and also to grant consequential benefits thereof, with effect from that date.

2. The respondents have filed a reply statement. According to them, seniority is not the only criterion for promotion. Trade test had to be passed. Trade test was conducted by a Board consisting of four officers vide A-3, A-6 and A-8. All the Members were present when the trade test was held each time. Detailed tests including driving skill test were held. The conduct of the trade test was not left to any single member. Average of marks awarded by all the four members was considered. According to the respondents, the 4th respondent being the Motor Transport Officer(MTO), INS Garuda was competent to be a member and was also competent to hold the test on driving skill, practical test etc. The allegation of bias or malice had no basis since the assessment was based

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on performance. Respondents would maintain that the applicant failed as his performance before the Board was not satisfactory. Passing trade test and attaining the necessary eligibility for promotion was a criterion for financial upgradation under the ACP Scheme and since the applicant did not qualify, the benefit of ACP was also could not be granted to him. The respondents have filed a communication dated 27.5.99 R3-A from the Base Victualling Officer addressed to Flag Officer-Commanding-in-Chief, Southern Naval Command, Cochin reporting that the allegations of the applicant were unfounded and without any bearing on the results of the trade test and that the general performance of the individual as MTD had also not been very encouraging.

3. In the rejoinder filed by the applicant it is alleged that the applicant's failure in the qualifying trading test was entirely the handiwork of the 4th respondent. According to the applicant, he appeared in the trading test on three occasions and on all the occasions the 4th respondent was a Member of the Board. The 4th respondent influenced the TTB and saw to it that the applicant failed, it is urged. The applicant also questions the technical qualification of the 4th respondent and has further pointed out that in the reply statement the evaluation method is not properly explained and the competence of the members of the Board to hold the position as members was not made out. Respondents have filed additional reply statements and the applicant rejoinders respectively reiterating and augmenting their averments.

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4. We have gone through the pleadings and other material on record. We have also considered the arguments of Shri T C Govindaswamy, learned counsel for the applicant and Shri C. Rajendran, learned SCGSC. Shri Govindaswamy would with considerable force, contend that the applicant had a long and consistent record of professional competence and that he was a victim of bias, grudge and malice on the part of the 4th respondent who inspite of the applicant's grievance petition A-5 dated 21.5.99 was allowed to be on successive TTBs. According to the learned counsel, when specific allegations of malafides were raised, it was the duty of the respondent-authorities to take steps to examine the same, either to repel such allegations or to take remedial action. Learned counsel would submit that the 4th respondent did not even have a valid driving licence when he was the sole member who put the applicant to driving skill test in the trade test held in pursuance of A-2 memo. Learned counsel for the applicant would further lay great emphasis on a past incident which caused the 4th respondent prevail over the other members of the TTB for the applicant's elimination from the list of successful candidates. The impugned orders to the extent it related to the applicant were arbitrary, illegal and discriminatory and were hence liable to be set aside, learned counsel would urge. According to Shri C. Rajendran, learned SCGSC, the allegations of malice, bias and incompetence of the 4th respondent bringing about the applicant's failure had no substance. The very composition of the TTB would go to show that it was not a one man show. There was no reason to remove the 4th respondent from the TTB since he was a man of proven

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merit and since he was occupying a very relevant post i.e. that of MTO. The applicant's allegation that the 4th respondent prevailed over the other members of the TTB was totally baseless. The applicant had to necessarily pass the trade test and since he did not pass the test, he could not be placed in Grade-I. The TTB was made up of senior officers who could not be either by one person as alleged by the applicant, since each of them have involved in support of evaluation of every candidate, the learned standing counsel would submit. Not a single person who was not qualified in the trade testing had been promoted, according to learned SCGSC. The file containing record of the TTB proceedings pertaining to the promotion to the post of CMD Grade-I has also been produced for our verification.

5. We have given our anxious consideration to the averments and contentions of the applicant and looked into the counter statements filed by the respondents and the further submissions by the respective counsel. We have also examined the TTB proceedings produced for our perusal. We find that each of the TTB was constituted by four members with a senior Officer as President, Deputy Labour Welfare Commissioner(Central) was one of the Members in each TTB. The Board Members are seen to have applied their mind before the proceedings were concluded. The deputy Labour Welfare Commissioner(Central) was present on all trade tests involving the applicant as is borne out by the pleadings including additional rejoinders. No instance of any unfairness has been noticed by that authority who was an independent member. There is nothing to suggest that the participation of the

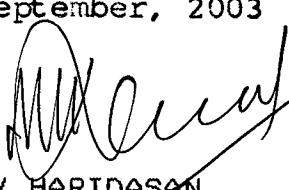
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other members in the process was just ritualistic, that the remaining members were influenced by the decision of the 4th respondents and that the 4th respondent has shown any bias or malice at any stage of the proceedings in order to fail the applicant in successive trading tests. We are not persuaded to believe that the 4th respondent was in any manner the dominant and decisive member of the Board. His qualification is not something which this Tribunal is in a position to question. He was the Motor Transport Officer of INS Garuda and as such, he was chosen as member of the TTB. Therefore neither the constitution of the Board nor any of the proceedings ex facie appears to be vitiated. It is thus apparent that with all his experience as driver, the applicant unfortunately has not made the grade. He should not allow himself to be desperate or swayed by unfounded surmises. The allegation of bias and malice without any tangible evidence cannot be acted upon.

6. In view of the facts and circumstances, we decline to interfere in this case. The O.A. being without any merit is dismissed. No costs.

Monday, this the 29th day of September, 2003


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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