

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 363 OF 2009

Friday, this the 26th day of March, 2010.

CORAM:

**HON'BLE Mr. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Baby Mathew, now residing
at Kaniyamkandathil House,
Purapuzha P.O., Thodupuzha,
working as MCM (M.T. Fitter),
Y.U.C. NSRY, Naval Base, Kochi.

... Applicant

(By Advocate Mr. A.X. Varghese)

versus

1. Flag Officer Commanding-in-Chief,
Head Quarters, Southern Naval,
Command, Kochi.
2. Administrative Officer Grade-II,
Staff Officer (CP), Southern
Naval Command, Kochi.
3. Mr. C.R. Hariharan (SC),
Master Crafts Man (MT Fitter),
Command Transport Workshop
(CTW), Naval Base, Kochi. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 26.03.2010, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER

Aggrieved by the promotion order of one Shri. Hariharan dated 10.11.2008, the applicant has filed this O.A. The applicant also wanted a declaration that he is entitled for promotion to the post of Chargeman-II as he is already qualified by passing the Departmental Promotion Trade Test during 2003. The applicant also has a case that the present amended rules shall not



be implemented as it is amended with a malafide intention to avoid promotion to the applicant.

2. The original application has been admitted and the notice has been ordered to the respondents. Respondents No.1&2 have resisted the original application by filing their reply statement. Though notice was served on 3rd respondent, there was no appearance for the 3rd respondent. The stand taken in the reply statement filed on behalf of the respondents No.1&2 is that the applicant though passed the Departmental test as per then existed service rules as on 08.08.2003, he is not entitled for promotion on passing of that trade test as there was no vacancy and that apart there are senior officers who are entitled for promotion to the post of Chargeman-II. The further stand taken in the reply statement is that the amendment brought out to the Recruitment Rules is not with any malafide intention or to show any victimization against the applicant. It is in the normal course, the Department wanted to amend the service rules. Further, it is stated that as per the present rules Annexure R2, a promotion to the post of Chargeman-II shall be effected only on passing the trade test and after having a residency period of 8 years. The applicant has not qualified as per the present rule as he is not having the required residency period for promotion. Further, it is stated in the reply statement that Annexure A9 order of promotion to Shri. Hariharan, 3rd respondent is in accordance with the rules as Shri. Hariharan was senior to the applicant and having passed the trade test, he was promoted to the post. Unless the applicant passed the trade test as well as having the residency period, he would not be promoted to the post. Hence, the O.A. is devoid of any merit.

3. We have heard counsel appearing for the applicant and also counsel



appearing for the respondents. The contention of the applicant is that as he has already passed the trade test on 08.08.2003, he should have been promoted to the vacancy occurred prior to the amendment of the service rule namely, before the commencement of the Annexure R2 rules. The amended Annexure R2 has been brought to deny the promotion to the applicant and that apart this Tribunal has to consider whether the applicant is entitled to be promoted to the post occurred during 2006 i.e., before the commencement of Annexure R2 service rules. The contention of the applicant is that if the vacancy considered is of 2006, the applicant should have been promoted. To the above argument relying on the reply statement, the counsel for the respondents repeats his stand that the applicant is not entitled for promotion as he is not qualified to be promoted having the required residency period and that at the time of occurrence of vacancy, one Shri. Thanaraj who was senior has been promoted. After the promotion given to Shri. Thanaraj, vacancy occurred only in 2008 and that vacancy has to be filled up by Shri. Hariharan, 3rd respondent who is senior to the applicant and who is qualified to be promoted also.

4. The question to be considered in this O.A., is that whether the commencement of the amended rule will effect the promotion of the applicant who had passed the trade test when the earlier rule was in force or not. This Tribunal had considered this question at the time of admission and relied on the judgment of the Apex Court in the case of Y.V. Rangaiah, 1983 (3) SCC 284, where the Hon'ble Supreme Court has considered that once an amendment is made to the Recruitment Rules, vacancies prior to that has to be filled up by applying the existing rule. Further in this case, we have seen that, that question does not arise at all as the vacancy in this case has arisen

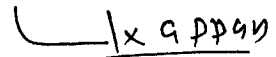


only after the amendment of rule. Even though there are two vacancies occurred during 2006-2008, as per the Recruitment Rules, the passing of the trade test as well as the residency period are required for promotion and the seniority has also to be considered for promotion. If so, the promotion given to the 3rd respondent is in accordance with the provisions of the service rule and there is no material before us to hold that the amendment made to the Recruitment Rules is with malafide intention to avoid the applicant and that apart, we see the vacancy after the amendment of the rule, he could be appointed as per the rules in existence. If so, the applicant has to wait till any other vacancy and his turn comes on seniority level. Hence, we see that the O.A. is devoid of any merit and stands dismissed without any order as to costs.

(Dated, the 26th March, 2010.)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE K. THANKAPPAN
JUDICIAL MEMBER

rkr