

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 373/2008

Dated this the 11th day of March, 2010

C O R A M

HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

K.C. Seethy Driver (Retired)
Jawahar Navodaya Vidyalaya
Kulamavu Idukki District
residing at Kottayil House
Kulamavu, Idukki

Applicant

By Advocate Mr. Jobi A. Thampi.

Vs

- 1 The Commissioner
Navodaya Vidyalaya Samiti
Kailash Colony
New Delhi-110 048
- 2 The Deputy Director
Navodaya Vidyalaya Samiti
Hyderabad Region, Sardar Patel Road
Secandabad, Andhra Pradesh-500 003
- 3 Union of India represented by Secretary
Ministry of Human Resource Development
Department of School, Education and Literacy
New Delhi.
- 4 Principal
Navodaya Vidyalaya
Kulamavu, Idukki District-685601

5 Deputy Commissioner,
Navodaya Vidyalaya Samiti
(Hyderabad Region) 1/1/10/3 S.P.Road
Secunderabad-500 003 (Andhra Pradesh)... Respondents

By Advocate M.K.Damodaran & Associates for R-2,4 & 5

By Advocate Mr. Sunil Jacob Jose, SCGSC for R-3

The Application having been heard on 25.2.2010 the Tribunal delivered the following:

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a retired Driver of the Navodaya Vidyalaya, seeks benefits of promotion under the promotion scheme introduced by the Government.

2 The applicant entered service as Driver in the Navodaya Vidyalaya, Kulamavu, Idukki District on 1.1.1988. During 1993, the Govt. introduced a promotion scheme for the Staff Car Drivers as per DOPT OM dated 30.11.1993. As per the scheme, Drivers were grouped in to three Groups as Ordinary Grade, Grade-II and Grade-I and those who have completed 9 years of regular service in the Ordinary Grade will be further promoted to Grade-II and on completion of 6 years of regular service as Grade-II will be promoted to Grade-I. Though the applicant had completed 9 years regular service in January 1997, he was promoted only on 25.6.2001 and on 1.11.2004, in Grade-II and Grade-I respectively. In the meanwhile, following the implementation of orders of CAT Principal Bench in O.A. 2529/1996 a special grade was also sanctioned on completion of 3 years regular service as Grade-I. Even though he was eligible for Grade-II on 1.1.1997 and Grade-I on 1.1.2003, he was not granted the same in time. The grievance of the applicant is



that, though his juniors have been granted promotion to Grade-II on completion of 9 years, he was denied the same. He submitted representation (A-10). As there was no response, he filed this O.A. for a declaration that he is entitled to the benefit of Annexure A-1, A-2 and A-7 as he has satisfied the conditions specified therein.

2a. The respondents 2, 4 & 5 in their reply statement stated that the scheme for promotion of Drivers in the Navodaya Vidyalaya Samiti (being an autonomous organisation) was introduced only by order No.2-79/99-NVS (Estt.) dated 2.8.1999, (Ref. at R-2(a)), in the ratio 55:25:20 viz. Ordinary Grade, Grade-II and Grade-I. Appointments to the posts of Grade-II and Grade-I will be made by promotion on seniority-cum-fitness basis subject to passing of a trade test. They further stated that the Samiti modified the promotion scheme in pursuance of the directions given by the CAT Principal Bench in O.A.2529/96 dated 5.5.2000 introducing **Special Grade** in the pay scale of Rs. 5000-150-8000 for Grade-I Drivers with three years regular service, on seniority-cum-fitness. The ratio was also revised as 30:30:35:5. They further submitted that the representation of the applicant was not acceded to as the Samiti implemented the promotion scheme only prospectively in 2001. They denied that juniors of the applicant have been granted promotion with retrospective effect.

3 The applicant filed rejoinder reiterating the averments in the O.A.

4 The respondents filed additional reply statement stating that the Samiti implemented the promotional scheme in the Regions on different dates.

M.

5 The applicant filed additional rejoinder stating that juniors were granted promotion overlooking him. He has produced A-12 office order dated 21.4.2006 in support of his contention and sought promotion.

6 We have heard learned counsel on either side and perused the documents.

7 There is no dispute that the promotion scheme for Staff Car Drivers was introduced by the Government of India, Ministry of Personnel & Public Grievances and Pension. Vide OM dated 30.11.1993 which was modified by OM dated 27.7.1995. According to the OM, the eligibility criteria were modified as under:

<u>Grade</u>	<u>Eligibility period</u>
(A) Ordinary Grade (Rs.950-20-1150-EB-25-1500)	Basic grade
(B) Staff Car Driver Grade-II (Rs.1200-30-1440-EB-30-1800)	9 years of regular service in ordinary grade
© Staff Car Driver Grade-I (Rs. 1320-30-1560-EB-40-2040)	6 years regular service in the Grade II or a combined service of 15 years in Grade-II and Ordinary Grade put together.

As per the promotion scheme, Driver (Ordinary Grade) is eligible to be promoted to Grade-II after completion of 9 years of service and Grade-II Driver is eligible to be promoted to Grade-I after 6 years of service as Grade-II or 15 years of combined service as Ordinary Grade and Grade-II put together. Further, the promotion is to be effected in the ratio of 55:25:20, on the recommendations of the DPC subject to passing of a trade test.

M.

8 The respondents have averred that the Navodaya Vidyalaya Samiti adopted the promotion scheme only in 1999 and implemented it in 2001, as such, promotion has only prospective effect. The OM of 1999 of the Samiti adopting the promotion scheme for Drivers outlined in DOPT OMs of 1993, 1995 and 1998, was not produced by either the applicant or the respondents. Hence, as referred to in Annexure R-2(a), the date of introduction is taken as 2.8.1999. The Samiti further modified the scheme pursuant to the direction of the CAT Principal Bench in O.A. 2529/1996 dated 5.5.2000 by introducing Special Grade (non-selection) for those who have put in three years of regular service in Grade-I in the revised ratio of 30:30:35:05.

9 The claim of the applicant is that having regularised in service w.e.f. 1.1.1988, he is entitled to be granted promotion to Driver Grade-II w.e.f. 1.1.1997 and Grade-I w.e.f. 1.1.2003 subject to passing the trade test and availability of the vacancy irrespective of the fact that the Samiti introduced the Promotional Scheme only in 1999. As per Annexure R-2 seniority list of 59 Drivers in the Samiti, the applicant is at Sl. No. 1. Therefore, he should have been considered for promotion to Grade-II and then to Grade-I and then to Special Grade on completion of 9, 15 years and 3 years respectively subject to passing the trade test and availability of vacancy. The respondents have no case that the applicant has not passed the trade test or there is no vacancy.

10 Regarding the averment of the applicant that his juniors got Grade-II promotion on completion of 9 years, it is seen that Regional officers of the Samiti had certain doubts about eligibility for the Grade-II promotion which was finally clarified vide Annexure R-2(b).

11

Annexure R-2(b) dated 10.2.2005 laid down that Grade-II promotion is to be granted on completion of 9 years and hence vide Annexure A-12 dated 8.4.2006, the applicant's juniors from Serial No. 18 onwards in the seniority list R-2(c) were granted promotion from 2.1.2000 i.e. the dates on which they completed 9 years of service while the applicant is granted promotion only on 25.6.2001 (A-3). Therefore, the contention of the respondents that the scheme was implemented by the Samiti in 2001 does not hold good in the eye of law.

11 The grievance of the applicant is that the Samiti arbitrarily fixed prospective date of implementation of the Promotion Scheme contrary to the order of the Government of India, Department of Personnel & Training according to which the promotion scheme is effective from 30.11.1993. But the OM or the Scheme was made applicable to Samiti only with effect from 2.8.1999 being an autonomous body, as per the decision held in Balbir Singh Vs. KVS and Others (2001 (1) ATJ 552) The Principal Bench of the CAT, New Delhi in the above case held as follows:

"2 The KVS is a Society registered under the Societies Registration Act. The Government of India have issued the OMs dated 13.9.91 and 7.4.95 in pursuance of the recommendations of the Fourth Central Pay Commission whereunder a scheme has been evolved for Group-C and D employees of the Government to get at least one promotion in their service career. These orders have come into force from 1.4.1991. Again the Government in the OM dated 7.4.95 considering the demands of the employees for cadre review of Group-D staff agreed that the existing scale of Rs. 750-940 would continue as an entry grade and that the other two scales of pay of Rs. 775-1025 and Rs. 800-1150 would be merged into a single elongated scale of

M

pay. The benefits given under the above two OMs were however, confined to the employees of the Government in Group-C and D.

3 The short question that arises in this case is whether the benefits under the above OMs are applicable to the employees of the KVS? Admittedly, they are not the Government employees. It is no doubt true that the OM dated 13.9.91 has been sent to other autonomous bodies, societies and societies like the first respondent. But until and unless these OMs were made applicable to other organisations, no reliance could be placed on them and no relief could be granted to in terms of these two OMs to the applicant. The first respondent vehemently contends that these OMs have not been applied by its organisation."

(emphasis added)

Therefore, unless these OMs are made applicable to KVS it is not suo motu applicable to the employees of the Samiti.

The Samiti implemented the promotion scheme of the Govt. Of India for Staff Car Drivers vide Notification No.1-6/94-NVS dated 2.8.1999. If so, the service of the applicant w.e.f. 1.1.1988 has to be counted for the purpose of promotion to Grade-II and subsequently to Grade-I and Special Grade, subject to passing the trade test and availability of vacancy in the revised ratio of 30:30:35:05.

12 In this view of the matter, we are of the opinion that the O.A is to be allowed. Accordingly, we allow the O.A declaring that the Navodaya Vidyalaya Samiti is bound to implement the promotion scheme w.e.f. 2.8.1999. The respondents are therefore, directed to convene review DPC, consider promotion of the applicant as envisaged in the scheme keeping in mind our observation above. The promotion of the applicant shall be made pursuant to the review DPC, pay, pension

TM

etc. of the applicant shall be refixed and consequential arrears paid to him as early as possible, at any rate within four months from the date of receipt of a copy of this order. There shall be no order as to costs.

Dated 11th March, 2010

m m —
K. NOORJEHAN
ADMINISTRATIVE MEMBER

✓appn
JUSTICE K. THANKAPPAN
JUDICIAL MEMBER

kmn