

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 400/2005

FRIDAY THIS THE 16th DAY OF MARCH, 2007.

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE GEORGE PARACKEN, JUDICIAL MEMBER**

K.K. Cleetus S/o K.K. Paul
Kottaparambil House
Near Glass Factory, Kalamassery
working as LD Clerk, Navel Ship Repair Yard
Kochi-682 004

..Applicant

By Advocate Mr. R. Sreeraj

Vs.

- 1 The Flag Officer Commanding-in-Chief
Southern Naval Command,
Kochi-682 004
- 2 The Commodore Superintendent
Naval Ship Repair Yard
Kochi-682 004
- 3 Union of India represented by its
Secretary to Government of India
Ministry of Defence, New Delhi.

..Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The grievance in this OA is the rejection of the claim of the applicant for grant of the first ACP under the Assured Career Progression scheme.

2 The applicant joined service as a Peon on 30.4.1982. During the year 1987, he was appointed as a LD Clerk on casual basis and was later regularized after passing the departmental test with effect from 17.12.1991. The applicant submitted a representation to the 1st respondent praying for grant of first ACP benefit with effect from 1999 as by that time he had completed 12 years of service. He was informed by order dated 2.9.2004 that since he had been promoted with effect from 17.12.1991 he was not entitled to the benefits of first ACP. When the applicant pointed out the case of another Stenographer, in whose case a different criterion was adopted, he was informed by the Annexure A-3 order that he stands on a different footing as Recruitment Rules in his case provides for a promotion quota. It is further contended by the applicant that the respondents have granted the benefits of upgradation under first ACP to one V.K Jayadevan, LDC and K.P Rapphai L.D.C who were appointed like the applicant in 1986 and who had failed in the qualifying departmental test. Both these persons have been granted the first ACP with effect from 2000 while the applicant has been denied the same. Thus the applicant has been discriminated, is the case.

3 Per contra, the respondents have submitted that the applicant was appointed to the post of peon on casual basis on 30th April 1982 and absorbed as regular in 1985. While serving as peon he appeared in a competitive examination for direct recruitment to the

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post of LD Clerk along with nominees of employment exchange and was appointed as LD Clerk on casual basis with intermittent breaks. The applicant had qualified in the departmental test against 10% quota and was promoted to the post of LD Clerk on 17th December 1991. The individuals who have got one promotion are not eligible for first financial upgradation. As per clarification No 8 issued by the Department of Personnel & Training on No 35034/1/97-Estt(vol iv) dated 10th February 2000, in the case of Gr. D employees who become LD Clerks on the basis of a Departmental Examination, relevant recruitment rules prescribe a promotion quota to be filled up on the basis of a departmental examination and therefore such appointments shall be counted as promotion for purposes of ACP scheme (Annexure R3). The respondents have further averred that no identically situated Peons have been granted ACP benefits. Sri V.K Jayadevan and K.P Rapphai were appointed as peons and subsequently selected for the post of LDC through direct recruitment. The extracts of service registers at Annexures R-4 and R-5 would show that they have been appointed as LDCs whereas the applicant has been promoted as LDC.

4 We heard the Learned counsel on both sides. The counsel for the applicant argued that the applicant and the two persons mentioned are identically situated and the applicant's services were also regularized counting his past service as was done in the case of

Sri V.K Jayadevan and K.P. Rapphai by the order of this Tribunal in OA 1936/92.

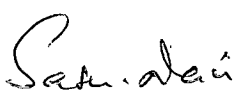
5 A thorough search was made but no such case file with the above number could be traced in the Tribunal. The applicant also could not produce any documentary proof of the same. OA files 285/93 and 2179/83 filed by casual LDCs in the same respondents' office is available and has been verified. It is seen that Sri V.K Jayadevan and K.P.Rapphai Casual LDCs were among the applicants in OA 2179/93 and these OAs were disposed off by a common order directing to count their casual service for all purposes except seniority. Therefore it is clear that these two persons were casual LDCs in 1993 and their services were regularized subsequently on the same posts on the basis of Tribunal's order and therefore it is not counted as promotion. In the case of the applicant, though the applicant claims that he was also regularized on the same basis, there are no entries to that effect in his service register extract whereas such entries are there in the case of the other two persons. On the other hand, there is entry in his service register (extract at R-2) to the effect that he was promoted on 17th December, 1991 against an existing vacancy. But the respondents in their reply have stated that "though his services were regularised from 6th July 1987 the fact that he was promoted as LD Clerk from the post of Peon remains unchanged". This is baffling statement as the applicant would not have been regularized from 1987 as LDC if he had not been working as a casual LDC and if that were true he

2

could be treated only as having been transferred to the post of LDC in 1991. The applicant has stated that the two others had also joined as Peons later than him but he has been denied first ACP for the only reason that he had appeared and passed the departmental test whereas they had failed. Prima facie it may appear that there is an element of injustice to the applicant compared to the two individuals mentioned above. But it is of his own making as he had while working as a casual LDC again appeared for the departmental qualifying test and got promotion as regular promotion in the 10% quota prescribed under the Recruitment Rules. Even if he had filed an OA as claimed, in 1992 the order in the O.A. might have been rendered subsequently. This promotion that he got cannot be nullified now. Hence we cannot fault the respondents on their stand as the ACP scheme is meant to be a substitute for regular promotion. No relief can be granted to the applicant on this score, we hope that the applicant would become eligible for second financial upgradation earlier than the counterparts mentioned by him and thereby his grievance would be met to some extent. OA is dismissed. No costs.

Dated 16.3.2007


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN