

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 180/00119/2014**

**Monday, this the 12<sup>th</sup> day of March, 2018**

**CORAM:**

**Hon'ble Mr. U. Sarathchandran, Judicial Member**  
**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member**

E.S.K. Das, aged 57, S/o. E. Bharathan,  
 Civilian Technical Officer (A&E),  
 Controllerate of Naval Armament Inspection,  
 Alwaye, Residing at Shobha Bhavan, Thevakkal,  
 VK Colony Post, Cochin 21. .... **Applicant**

**(By Advocate : Mr. P.V. Mohanan)**

**V e r s u s**

1. The Director General of Naval Armament Inspection,  
 Directorate of Naval Armament Inspection,  
 Integrated Headquarters, Ministry of Defence (Navy),  
 West Block V, Wing No. 1 (FF), R.K. Puram, New Delhi 110 066.
2. The Controller of Naval Armament Inspection (South),  
 Controllerate of Naval Armament Inspection,  
 NAD (Post), Alwaye, 683 563.
3. The Chief of Naval Staff (DCP), Integrated Headquarters,  
 Ministry of Defence (Navy), New Delhi-110 001. .... **Respondents**

**[By Advocate : Mr. N. Anilkumar, Sr. PCGC (R)]**

This application having been heard on 20.02.2018, the Tribunal on  
 12.03.2018 delivered the following:

**ORDER**

**Per Hon'ble Mr. U. Sarathchandran, Judicial Member –**

Applicant is the senior most Civil Technical Officer in the  
 Ammunition & Explosive Wing [for short CTO (A&E)] under respondent  
 No.2. He states that he is due to retire on superannuation on 30.9.2016(the

OA was filed on 13.2.2014). The Civil technical wing of the Naval Armament Inspection Organisation consists of (a) Ammunition & Explosive Section, b) Mechanical Section and c) Design Section . As per Annexure A3 Recruitment Rules the method of recruitment to the next promotion grade i.e. Senior Technical Officer (for short, STO) is by promotion failing which direct recruitment. Applicant is aggrieved by the requisite qualification in Annexure A3 Recruitment Rules for the post of STO as per which the qualification prescribed is CTO (Mechanical/A&E/Design) with eight years regular service in the grade failing which CTO (Mechanical/A&E/Design) with 8 years combined regular service as CTO (Mechanical/A&E/Design) and Senior Foreman (Mechanical/A&E/Chief Draftsman) out of which 3 years service should be in the grade of CTO. According to him as there is no candidate with requisite qualification from the CTO (A&E) wing with 8 years regular service or combined service as stated above, the respondents are going ahead to fill up the promotional post of STO by promotion of persons with the above qualifications from the Mechanical Wing.

2. Applicant states that he commenced his service as Examiner (Ammunition) on 8.5.1978. He was promoted as Chargeman in 1985 and was further promoted as Chargeman Grade-I (erstwhile Foreman) on 23.12.2002. Subsequently he was promoted as Senior Foreman on 31.12.2007 and thereafter promoted as CTO (A&E) on 1.4.2011.

3. He states that as Ammunition and Explosive section is a very important section of the Naval Armament Inspection Organization, there

should be STOs from the A&E wing also, if necessary by waiving the residual period of service stipulated in the Recruitment Rules because no one in the A&E wing is having continuous service or combined service of 8 years.

4. The applicant sent Annexure A4 representation dated 21.10.2013 to waive the eligibility criteria of 8 years stating that he is the senior most CTO (A&E) whose promotion to the cadre of Foreman was delayed due to administrative reasons. According to him though the respondent No.2 recommended Annexure A4 representation vide Annexure A5 letter the headquarters without taking any action forwarded the matter to respondent No.1 vide Annexure A6 letter dated 25.11.2013. The applicant argues that the determinative factor for promotion is eligibility of the incumbent at the time of arising of vacancy and hence if timely promotion had been given to him he would have been promoted to the cadre of Foreman (A&E) in 2005 itself. He therefore prays for relief as under:

“A. To direct the respondents to promote the applicant to the cadre for Senior Technical Officer forthwith with all consequential benefits.

B. To declare that the combined regular service acquired by the applicant in the cadre of Civilian Technical Officer (Ammunition and Explosive) and Senior Foreman is the requisite qualification for promotion to the cadre of Senior Technical Officer taking note that the applicant is deemed to have been promoted as Foreman in the year 2005.

C. To direct the respondent No. 1 to consider and dispose of the representation after taking note of the recommendation made in the letter dated 28.10.2013 forwarded by the Controller of Naval Armament Inspection.

D. Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice.”

5. In the reply statement the respondents state that it is not true that the applicant would have been promoted in the year 2005 itself because he

passed the departmental qualifying examination only in 2003 which is one of the eligibility criteria for being considered in the DPC proceedings. He has been promoted only on 31<sup>st</sup> December, 2007 and there has been no delay whatsoever in conducting DPCs. The applicant would be qualified for STO (A&E) only on 31.12.2015. Respondents further state that the post of STO (A&E) will never be filled by the officers of Mechanical/Design cadre and hence no adverse effect is envisaged in the administration of cadres if the post of STO (A&E) is not filled for want of eligible CTO (A&E). While stating that waiving of eligibility criteria of 8 years regular service/combined service for the post of STOs is impermissible in terms of Annexure A3 Recruitment Rules respondents pray for dismissing the OA.

6. A rejoinder was filed stating that he was grossly discriminated because respondent No. 1 had earlier waived two years residual period of 5 other persons who were promoted to the grade of Foreman. So also by waiving the entire residual period of Assistant Foreman, 13 Chargemen were promoted directly as Foreman in 2006, 2007 and 2008. He points out that four posts of CTO were vacant on 1.1.2005 and only 5 CTOs (A&E) were on the roll strength as on 1.1.2010 and further that two sanctioned posts of CTOs were vacant as on 1.1.2010. The Government has sanctioned two more posts of STO in 2013 and thus 3 posts of STO (A&E) are vacant at present. Applicant states that therefore he ought to have been promoted against the said post.

7. Additional reply statement, additional rejoinder and 2<sup>nd</sup> additional reply statement were also filed by the parties.

8. The short question to be considered is whether any relaxation can be given to the residual period prescribed in Annexure A3 Recruitment Rules for the post of Senior Technical Assistant (STO) or not ? Another question incidental to the above issue is whether the applicant can claim that he ought to have been promoted as Foreman with effect from the date on which the vacancy arose in 2005?

9. We have heard Shri P.V. Mohanan, learned counsel for the applicant and learned counsel appearing for the Central Government. Perused the record.

10. At the outset of his arguments Shri P.V. Mohanan referred to two Full Bench decisions of the High Court of Kerala ie. *Varghese & Ors. v. State of Kerala & Ors.* - 1981 KLT 458 (FB) and *Padmanabhan Nair v. Deputy Director* – 1991 (1) KLT 337 (FB). In both the aforesaid decisions the High Court held that promotion of juniors to existing vacancy before the seniors acquired the requisite qualification for promotion is permissible. In *Varghese's* judgment (*supra*) the Full Bench of the High Court held:

“5. A Full Bench of this Court in the decision in *James Thomas v. Chief Justice*, 1977 KLT 622 has also expressed the view that the general rule is that promotions are to be decided upon with reference to time of occurrence of vacancies and not the time of making the appointments. We think there is considerable force in the view that it is the time of occurrence of vacancy that should be relevant for determining the question of promotion and not the time the order of promotion is passed. The relevant date must be definite and not depending upon the volition of the authorities as otherwise the determination would be arbitrary. If it were to be the date of promotion that is to be relevant for

determining the title to such promotion the rule is capable of arbitrary exercise. Even if it is honest exercise that would be arbitrary because the fate of the service career will depend in each instance upon the time taken by the concerned authority in passing the order of promotion. On the other hand, there is definiteness in treating the date of occurrence of the vacancy as that which would determine the title of the person to be considered for promotion. The view taken by the Division Bench in *Ravindranath v. Calicut University* 1977 Lab I.C. 1127 appeals to us to be the rational view.”

The decision of *Varghese's* judgment (*supra*) was followed by the Full Bench in *Padmanabhan Nair's* case (*supra*) also wherein it was held:

“12. This being the position, the question for consideration is whether there was a vacancy of Headmaster on the date on which the third respondent became qualified, namely October 18, 1979. We have no hesitation in holding that there was such a vacancy. Sethumadhavan Nair retired from service on April 1, 1979 and the post of Headmaster fell vacant. That post was never filled up. The second petitioner was only appointed as teacher in charge on the basis of the relaxation of the provisions contained in sub rules (2) and (3) of the rule 44A enjoining advertisement for the post and the absence of suitable candidates even thereafter. The vacancy of Headmaster does not cease by there being a teacher in charge of the school. The teacher in charge is not the Headmaster, though he may perform the day to day duties of the Headmaster. All that it means is that he is in charge of the school, in the absence of a regular Headmaster. The vacancy continues and it is liable to be filled up by a qualified hand as and when one becomes available.”

However, Hon'ble apex court in *Union of India & Ors. v. K.K. Vadera & Ors.* - AIR 1990 SC 442 and *Nirmal Chandra Sinha v. Union of India & Ors.* - (2008) 14 SCC 29 held that promotion cannot be granted prior to the convening of DPC and the promotion takes effect only from the date on which the promotion is granted. In *Nirmal Chandra Sinha's* judgment (*supra*) the apex court held:

“7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide *Union of India v. K.K. Vadera* – 1990 SCC (L&S) 127, *State of Uttaranchal v. Dinesh Kumar Sharma* - (2007) 1 SCC 683, *K.V. Subha Rao v. Govt. of A.P.* - (1988) 2 SCC 201, *Sanjay K. Sinha-II v. State of Bihar* – (2004) 10 SCC 734, etc.”

11. Therefore, in the light of the apex court decision we are of the view that the contention taken by the applicant that his promotion ought to have taken place from 1985 when the vacancy arose cannot be accepted. Moreover, the actual date on which he became eligible for promotion and

got promotion was disputed by the respondents. According to the respondents the applicant became eligible for promotion to the post of Foreman only from 2007. Obviously applicant wanted to consider his promotion to have taken effect from the date of occurrence of vacancy i.e. 2005 only to acquire the threshold requirement of 8 years combined service for the post of STO.

12. The next question to be considered is whether the applicant is entitled to relaxation of the prescribed residual period of 8 years or not ? It is settled law in *Kendriya Vidyalaya Sangathan & Ors. v. Sajal Kumar Roy & Ors.* - (2006) 8 SCC 671 that relaxation can be granted only for the purpose specified and the appointing authority should exercise the discretionary jurisdiction to relax the age limit (only for deserving candidates) upon the recommendation from the appointment committee/selection committee and that the discretion can be exercised only within the four corners of the rules. In the case on hand Annexure A3 Recruitment Rules do not prescribe any power for relaxation. Only when the Recruitment Rules prescribe for relaxation the authority can exercise the power of relaxation and that too on the lines as stated in *Sajal Kumar Roy's* judgment (*supra*) [See also *P.K. Ramachandra Iyer & Ors. v. Union of India & Ors.* – (1984) 2 SCC 141].

In the light of the above clear rulings of the apex court regarding the relaxation of rules, we are of the view that the claim put forth by the applicant is absolutely unsustainable. Hence, we hold that the OA is only to be dismissed. We do so.

13. In the result the OA is dismissed. Parties shall suffer their own costs.

**(E.K. BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

**(U. SARATHCHANDRAN)**  
**JUDICIAL MEMBER**

**“SA”**



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**APPLICANT'S ANNEXURES**

- Annexure A1** – True copy of the seniority list of Civil Technical Officer (A and E) and Senior Technical Officer CP (G)/0110/SL/NAI dated 30.9.2013.
- Annexure A2** – True copy of the proceedings CP(P)/8416/VI CPC/TSS dated 25.1.2010.
- Annexure A3** – True copy of the Recruitment Rule of Senior Technical Officer.
- Annexure A4** – True copy of the representation dated 21.10.2013.
- Annexure A5** – True copy of the recommendation letter AYI/0306 dated 28.10.2013.
- Annexure A6** – True copy of the letter CS 2762/30 dated 25.11.2013.
- Annexure A7** – True copy of the seniority list of Foreman (Ammunition), Assistant Foreman (Ammunition), Charge man Grade-I Ammunition, and Chargeman Grade II (Ammunition).
- Annexure A8** – True copy of Chargeman Grade I as on 20.9.2005 and Assistant Foreman (Ammunition).

**RESPONDENTS' ANNEXURES**

Nil

-X-X-X-X-X-X-X-X-X-