

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/00765/2018

DATED THIS THE 03RD DAY OF APRIL, 2019

**HON'BLE DR. K.B.SURESH
HON'BLE SHRI C.V. SANKAR**

**...MEMBER(J)
...MEMBER(A)**

Vijukumar P.P,
S/o Prabhakaran P.A,
Aged about 44 years,
Senior Engine Driver,
O/o Commander of Yard (CoY)/Naval Ship Repair Yard,
Karwar, PIN-581 308. ...Applicant.

(By Advocate Shri T.C. Govindaswamy)

Vs.

1.Union of India represented by the
Secretary to the Government of India,
Ministry of Defence (Navy),
New Delhi-110 001.

2. Flag Officer Commanding-in-Chief
Headquarters,
Western Naval Command
Balad Pier, Near Tiger Gate,
Naval Dock Yard,
Mumbai – 400001.

3. The Flag Officer Commanding
Headquarters,
Karnataka Naval Area
Naval Base
Karwar-581308

4. The Commodore Superintendent,
(for CM (P&A), Naval Ship Repair Yard,
Naval Base
Karwar – 581308.

5. The Flag Officer Commanding-in-Chief,
Headquarters,
Southern Naval Command,
Naval Base
Kochi-682 004.

....Respondents

(By Shri. K. Gajendra Vasu, Senior Panel Counsel)

ORDER (ORAL)**HON'BLE DR.K.B.SURESH ...MEMBER(J)**

Heard. The matter relates to transfer, to which the applicant says that he is eligible on spouse ground, for which he had applied to the concerned authority and the Headquarters had granted it to him on condition that he will be placed one rung below. We quote the order dated 07.07.2017:

“CS/II/4202/C OF Y

07 Jul 17

The Flag Officer Commanding
Headquarters
Karnataka Naval Area (for CSO (P&A))
Naval Base
Karwar-581308.

Request for transfer on personal grounds – Shri PP Viju Kumar, Senior Engine Driver, COFY (Karwar)

1. Refer to this Headquarters letter of even number dated 01 May 17 and HQSNC letter CS 2761/38 dated 27 Apr 17.
2. HQSNC vide letter has intimated that Shri PP Viju Kumar, Senior Engine Driver could not be accommodated in the post of Senior Engine Driver, being a promotional post. However, vacancies in the lower posts of Fireman (Boat) and Topass are available at HQSNC to accommodate him on compassionate ground transfer. In case the individual is willing to join in HQSNC in any of the above lower posts, it is requested that he be relieved of his duties and directed to report to HQSNC. Kochi at the earliest on permanent transfer subject to the following conditions and giving undertaking to that effect:
 - (a) The individual is willing to join the new unit in the lower post with zero seniority and seniority of the individual will be reckoned from the date of joining the new unit.
 - (b) The individual will not be entitled to TA/DA/joining time etc.
 - (c) No disciplinary/ vigilance case is pending/ contemplated against the individual.
3. It is requested that the individual be informed accordingly.”

2. But then quoting less manpower at that Command, Karwar Naval Base authorities refused to relieve him from service. Thereafter, the applicant now produces an order dated 28.2.2019, which we quote below, Indicating that several others had been posted and promoted in the level of Engine Driver IIND Class and therefore he says with that their requirement is now satisfied.

“Headquarters
Karnataka Naval Area
Naval Base
Karwar-581 308
28 Feb 19

The Admiral Superintendent NSRY(Kar)
The Commander of Yard, C of Y (Kar)

PROMOTION ORDER TO THE HIGHER GRADE, ENGINE DRIVER IIND CLASS
OF C OF Y(KARWAR)

- 1. Refer to this Headquarters letter CS/4200/FOK/DPC/BCS Panel(I) dated 28 Feb19.
- 2. The under mentioned individuals are promoted for Engine Driver to Engine Driver IIND Class with effect from the date mentioned against each in PB I having Pay Scale of Rs.5200-20200 with Grade Pay 2800 against existing vacancy and retained in the present unit.

Sl No	Name & Designation	Effective date of promotion	Date of seniority of promotion	Remarks
I	Shri Ramkumar Sharma	01 Dec18	01 Apr 2013	As per the review DPC for the year 2012-13
II	Shri OJ Joseph	01 Dec18	01 Apr 2013	As per the review DPC for the year 2012-13
III	Shri Gajanan Namdev	01 Dec18	01 Apr 2014	As per the review DPC for the year 2013-14

- 3. The promotion is not to be effected during the currency of penalty imposed or disciplinary action contemplated against the individual. Details of punishment, if

any, be communicated to this Headquarters.

4. The promotion is subject to the condition that no disciplinary / vigilance case is pending against the individual. The promotion ordered vide this letter is subject to the final decision in cases pending before CAT/Court, if any.
5. It is stated that the pay fixation of the above individual may be carried out in accordance with the instructions contained in this Headquarters letter CS/IV/2920 dated 04 Oct 2000 after exercising option, if any, in the stipulated period.”

3. On the other hand also, when the Headquarter had passed an order, it is not appropriate for the subordinate authority to withhold it. Therefore, there will be a specific mandate to Karwar Naval Base to immediately relieve the applicant, so that he can join the transferred post.

4. OA allowed. No costs.

(C.V. SANKAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

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Annexures referred in O.A. No. 170/00765/2018

Annexure-A1: Copy of representation dated 24.11.2016 addressed to R2.

Annexure-A2: Copy of communication dated 07.12.2017 issued by R-5.

Annexure-A3: Copy of the letter dated 15.12.2017 issued by R2.

Annexure-A4: Copy of communication from R4 dated 25.01..2018.

Annexures with reply statement

Annexure-R1: Copy of letter dated –Feb 2017.

Annexures with rejoinder

Annexure-A5: Copy of letter dated 7.1.2011.

Annexure-A6: Copy of forwarding letter dated 15.7..2013.

Annexure-A7: Copy of representation dated 25.4.2016 submitted by one Ram Kumar Sharma.

Annexure-A8: Copy of letter dated 21.5.2014 from Adjutant General, Ministry of Defence.

Annexure-A9: Copy of list of persons nominated for temporary duty to Portblair.
