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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00957/2016

Wednesday, this the 3rd day of April 2019

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member

P.Kaladharan, Son of Padmanabhan
Aged 73 years, Store Holder (Retired)
Engine Factory, Avadi, Chennai
Residing at S.K.Cottage, Nangiarkulangara
Alappuzha District – 690 513

..... **Applicant**

(By Advocate Mrs.Rekha Vasudevan)

V e r s u s

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

2. The Director General, Ordinance Factory Board
IOA, S.K.Bose Road, Kolkatta – 700 001

3. The General Manager, Engine Factory
Avadi, Chennai – 600 054

4. The General Manager
Ordinance Factory, Tiruchirappalli
Tamilnadu- 620016

..... **Respondents**

(By Advocate – Mr.P.R.Sreejith,ACGSC)

This Original Application having been heard on 28.3.2019, the
Tribunal on 3.4.2019 delivered the following:

ORDER

Per: Mr.E.K.Bharat Bhushan, Administrative Member

The Original Application No.180/00957/2016 is filed by
Mr.P.Kaladharan, retired Store Holder, Engine Factory, Chennai residing in

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Alappuzha district alleging denial of benefits due to him under the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act 1995. He submits that as per the Government of India instructions dated 20.10.1998, Points No.1,34 and 67 are to be earmarked for the physically handicapped employees in Group C and D posts. Applicant alleges that he was denied the same and thereby promotion to the post of Chargeman Grade I/Store Holder. The stand adopted by the respondents is that this construed a Group B post and reservation under PH quota is not applicable to promotion in Group B posts. As the claim of the applicant pertains to 1989-97, during which time the post of Chargeman Grade I/Storeholder and Junior Works Manager were Group C posts, the stand adopted by the respondents is erroneous. The authorities herein postponed the operation of reservation roster from the year 1989 onwards until 2014 thereby delaying grant of retrospective promotions against the 3% quota. The impugned order also shows that the first vacancy earmarked by the respondents in the post of Chargeman Grade I/Store Holder is against Point No.33, which is also erroneous. The relief sought in the Original Application are as follows:

- a. Quash Annexure A 26 order dated 17.11.2014 issued on behalf of the 5th respondent denying the applicant promotion to the post of Chargeman Grade I, Chargeman Grade I/Storeholder and Junior Works Manager
- b. Declare that the applicant herein is entitled to be promoted against the 1st Point in the 100 Point Post Based Roster in the post of Chargeman Grade I and thereby entitled to be granted promotion to the post of Chargeman Grade I against the vacancy earmarked at Point No.1 in the 100 Point Post Based Roster.
- c. Direct the respondents to grant the applicant promotion with retrospective effect in the post of Chargeman Grade I with effect from the date of vacancy that was earmarked against Point No.1 in the 100 Point Post Based Roster in the post of

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Chargeman Grade I.

d. Declare that the 3% of the vacancies are to be earmarked in the post of Chargeman Grade I/Storeholder and Junior Works Manager being Group 'C' posts during the period from 20.11.1989 (the date of Annexure A5 Office Memorandum) to 28.8.1998 (the date of Annexure A1 reclassifying the post to Group B) and the reservation roster are to be maintained in the said posts for the period from 20.11.1989 to 28.8.1998.

e. Declare that the applicant is entitled to be granted the benefits of the reservation for the physically handicapped persons for promotion to the post of Chargeman Grade I/Storeholder and Junior Works Manager and is entitled to be granted accelerated promotion to the said posts against the point charged for the same in the 100 point Post based Roster.

f. Direct the respondents to grant the applicant promotion as Chargeman Grade I/Storeholder and Junior Works Manager against the quota earmarked for the Physically handicapped person.

g. Direct the respondent to revise and refix the pay of the applicant on grant of retrospective promotions to the post of Chargeman Grade I, Chargeman Grade I/Storeholder and Junior Works Manager and to revise and refix his pensionary benefits accordingly and to draw and disburse him the arrears of the pay and pension, within a short time frame.

h. To grant such other reliefs as may be prayed for and the court may deem fit to grant, and

i. Grant the cost of this Original Application. ”

2. The applicant had entered service on 1st January 1983. He met with an accident and due to his serious injuries, he was declared to be orthopedically handicapped with effect from 27.6.1989 with disability assessed at 60%. He had been initially granted promotion as Supervisor and on 28.9.1984 was promoted as Chargeman Grade II and thereafter as Chargeman Grade I with effect from 28.12.1992. He filed a representation on 21.8.1996, a copy of which is available at Annexure A-6, which was not responded to.

3. While matters stood so, the applicant opted to go on voluntary retirement and submitted his application for the purpose on 1.1.1997. He

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subsequently withdrew his application by a letter dated 15.4.1997. Disregarding the withdrawal, he was relieved from service on VRS with effect from 30.4.1997. As reported, representations saw no results and he approached the Madras Bench of this Tribunal in O.A 629 of 2003, which was allowed by the Tribunal. In compliance with the final order in the said O.A, the applicant was deemed to be in service till his actual date of superannuation i.e, 31.5.2003 although he did not actually join back in service, the order in his favour having come after this date.

4. The President accorded sanction to reclassify the post of Foreman NT and Chargeman Grade I/Store Holder as Group 'B' category on 20.8.1998 (Annexure A-1). Accordingly, the post of Chargeman Grade I was reclassified as Group B post as per letter dated 1.9.2004 (Annexure A-2) only with effect from that date onwards. The applicant goes to some extent of detail about the background in which the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was promulgated and submits that all departments were required to act urgently to give the benefits due under the Act to the employees belonging to the disabled category. Due to the reluctance on the part of the respondents to extend the benefits, applicant was constrained to move the Madras Bench of this Tribunal through O.A No.296 of 2005 which was allowed as per final order dated 13.1.2006 (Annexure A-9).

5. Annexure A-12 is a copy of O.M issued by Department of Personnel and Training earmarking the 1st, 34th and 67th points in the 100 Point Post

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Based Roster to be filled up by physically handicapped persons. Further to this, yet another O.M was issued on 29.12.2005 mandating 3% of the vacancies to be reserved for physically handicapped candidates for promotions in Group C and D category (Annexure A-13). As the respondents were reluctant to extend the reservation benefits to the applicant, he petitioned the Commissioner for Person with Disabilities on 26.3.2007 (Annexure A-15). However, quoting the submissions made by the respondents that the applicant had been promoted to the post of Chargeman Grade I/Store Holder which is a Group B post with effect from 30.10.1998, his petition was dismissed (Annexure A-20). His review petition was also turned down vide Annexure A-21. Not deterred by this, applicant sent a letter to the Chief Justice of India vide Annexure A-22 and same has been numbered as W.P© 2129/2013 (Annexure A-23) as Suo Moto Public Interest Litigation.

6. During the pendency of this, the 5th respondent issued promotion Order no.939 on 29.5.2014, but the applicant's name was not included (Annexure A-24). Annexure A-25 reply given by the respondents for not including the applicant in Annexure A-24 is that 3% reservation quota has been computed since 20.11.1989 onwards and the first PH vacancy arose only on 6.5.1993, by which time the applicant had already been promoted. Applicant disputes this fact. He had filed a further petition as per Annexure A-28 which has not been responded to. Hence, he is constrained to approach this Tribunal.

7. In the reply statement filed by the respondents, it is submitted that the

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respondent organisation had computed the reservation for persons with disabilities in promotion to Group C and Group D posts with effect from 20.11.1989 and antedated the promotion of eligible employees with disability to the relevant post on notional basis by taking into account 3% reservation in a 100 point roster for promotions in Group C and D posts. Consequently, the first PH vacancy was identified as on 6.5.1993 whereas the applicant was promoted on 28.12.1992 i.e, prior to occurrence of the first PH vacancy at Point No.33. Further, the applicant was transferred to Engine Factory Avadi with effect from 21.1.1995 and as per hierarchy, the next grade of promotion from Chargeman Gr.I was Store Holder, a Group B post. Hence, the applicant is not eligible for further promotion under PH quota as per rules. Earmarking of point numbers 1,34 &67 for reservation under PH quota had come into effect only vide DOPT O.M dated 4.7.1997 (Annexure R-1). Prior to that, the point numbers 33,67 and 100 were earmarked for PH vacancy. Thus, it is evident that the action taken by the 4th respondent in regard to identifying the first PH vacancy at Point no.33 was in order.

8. In answer to the contentions made by the applicant that Ministry of Defence notifying the sanction accorded by the President to re-classify the post of Foreman (NT) and Chargeman Grade I/Store holder into Group B (Annexure A-1) was issued on 20.8.1998, respondents submit that the above referred MoD letter is only a communication from MoD to Chairman, Ordnance Factory Board conveying the sanction of the President to re-classify the post of Foreman/NT & Store Holders in various Ordnance and

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Ordnance Equipment Factories as Group B. The notification on classification of Central Civil Posts was issued by the Government of India vide DoP&T order dated 20.4.1998 (Annexure R-2) whereby a Group B post has been classified as a Central Civil post carrying pay or a scale of pay with a maximum of not less than Rs.9000/- but less than Rs.13500/- and the order has come into effect from 20.04.1998. Thus the post of Chargeman Grade-I has been classified as a Group B post from the date of publication of the notification dated 20.4.1998.

9. Respondents submitted that a lot of references were received from various Ministries and Departments citing complexities while implementing the rules and these were being clarified by DoP&T when brought to DoP&T's notice. Hence the respondents could not immediately dispose of the representation dated 21.8.1996. The applicant had applied for voluntary retirement vide application dated 1.1.1997 and his application was accepted by the competent authority. He was accordingly informed on 21.2.1997. Then the applicant submitted an application on 15.4.1997 for withdrawing the application for VRS, but the same was rejected on 30.4.1997. The period from 1.5.1997 to 30.5.2003 in respect of the applicant was treated as qualifying service and he was granted the due benefits notionally as per the final order in O.A 629/2003. The Chief Commissioner for Persons with Disabilities had also observed that reservation in promotion in Group A and B for persons with disabilities is not applicable as per DoP&T O.M dated 29.12.2005 and hence no reservation can be extended to the applicant for promotion to a Group B post and the applicant is not entitled for any relief

and respondents pray for dismissing the O.A.

10. Heard Mrs.Rekha Vasudevan, learned counsel for the applicant and Mr.P.R.Sreejith,ACGSC, learned counsel for the respondents. Perused the records.

11. The contentious issue raised by the applicant relates to his eligibility to be promoted on the basis of reservation for persons with disabilities on the basis of 100 Point post based roster. He argues that the fact Chargeman Grade I post had been reclassified as a Group B, whereby it became inaccessible for reserved candidates, was only as per Annexure A-2 which is dated 1.9.2004. We find that this argument is not tenable as the Presidential notification on the subject had been issued on 20.4.1998 (Annexure A-1). Secondly, from the records on offer, we see that the applicant was promoted to the post of Chargeman Grade I with effect from 28.12.1992. By virtue of the favourable judicial order he obtained, he is deemed to have been continuing in service during the period from 1997 till his professed date of retirement 31.5.2003. The next post for which he could have been considered is that of Store Holder, but due to reclassification as per Annexure A-1, it being a Group B post, the same was made not available for PH candidates through reservation.

12. He argues that the post under the 100 Point roster at Point 1,34 and 67 are to be earmarked for PH among Group C and D posts and the instructions to this effect were issued on 20.4.1998. The applicant had already been

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promoted to a Group B post Store Holder post with effect from 28.12.1992. In other words, the first physically handicapped vacancy was identified as on 6.5.1993 whereas the applicant had been promoted prior to the occurrence of the first PH vacancy. Again, earmarking of Points 1,34 and 67 for reservation under PH quota had come into effect only on 4.7.1997 as per DoP&T O.M at Annexure R-1. Under the circumstances, we see no discrimination or departure from rules on the part of the respondents.

13. We are of the view that no interference from our side is called for in this Original Application. The applicant had got all the benefits which he was entitled to. The Original Application is dismissed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

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| Annexure A1 | - | True copy of the Letter No.44(3)/III/D(FY.II) dated 20.08.1998 issued by the Department of Defence Production and Supplies, Ministry of Defence. |
| Annexure A2 | - | True copy of the letter No.75/STAFF/A/NG dated 01.09.2004 issued for the 3 rd respondent. |
| Annexure A3 | - | True extract copy of the letter No.7248/Estt dated 30.04.1990 addressed by the Works Manager to the Secretary, Ordinance Factory Board. |
| Annexure A4 | - | True copy of the letter No.9/OFT/A/NG dated 29.06.1990 issued by the Deputy Director for the 3 rd respondent. |
| Annexure A5 | - | True copy of the Office Memorandum bearing No. 36035/1/89-Est(SCT) dated 20.11.1989 issued by the Department of Personal and Training. |
| Annexure A6 | - | True copy of the representation dated 21.08.1996 submitted by the applicant to the Secretary Ordinance Factory Board. |
| Annexure A7 | - | True copy of the Letter No. EFA/EST/511/96 dated 27.10.1996. |
| Annexure A8 | - | True copy of the final order dated 27.02.2004 of the Madras Bench of this Honourable Tribunal in O.A.No. 629 of 2003. |
| Annexure A9 | - | True copy of the final order dated 13.01.2006 in O.A.No.296 of 2005 of the Madras Bench of this Honourable Tribunal. |
| Annexure A10 | - | True copies of the common judgement dated 21.07.2009 in Writ Petition Nos. 14581 of 2007 and 24940 and 24941 of 2006. |
| Annexure A11 | - | True copy of the order dated 19.07.2017 in O.A No.180/00449/2014 of this Honourable Tribunal. |
| Annexure A12 | - | True copy of the O.N.No.36035/01/98-Estt(Res) Dated 20.10.1998 issued by the Department of Personnel and Training. |

- Annexure A13 - True copy of the O.M.No.36035/3/3004-Estt(Res) Dated 29.12.2005 issued by the Department of Personnel and Training.
- Annexure A14 - True copy of the O.M.No.36038/2003-Estt(Res) Dated 26.04.2006 issued by the Department of Personnel and Training.
- Annexure A15 - True copy of the petition put forth by the applicant On 26.03.2007 before the Chief Commissioner for Person with Disabilities.
- Annexure A16 - True copy of the Letter No.100/Misc/PK/CH-I(INT)/A/NG dated 18.06.2008 issued by the Director General, Ordinance Factory.
- Annexure A17 - True copy of the Letter No.100/Misc/PK/CH-I(INT)/-A/NG dated 29.03.2010 addressed by the Director/NG To the Chief Commissioner.
- Annexure A18 - True copy of the Letter No.3265/SH/OA-296/05/PK/-IMPL/A/NG dated 11th/112th May 2010 issued for the 3rd respondent.
- Annexure A19 - True copy of the letter No.100/Misc/CH-I/NT(S)/A/- NG dated 09.06.2010 issued for the 3rd respondent.
- Annexure A 20 - True copy of the Record of Proceedings dated 07.12.2010 of the Chief Commissioner for Persons With Disabilities.
- Annexure A21 - True copy of the Letter No. 11411901(Old Case No.4012/2007) dated 04.04.2011 issued by the Deputy Chief Commissioner.
- Annexure A22 - True copy of the letter dated 05.11.2012 addressed by the applicant to the Honourable Chief Justice of the High Court of Kerala.
- Annexure A23 - True copy of the letter No.PIO 92/2013 dated 19.03.2013 issued by the Public Information Officer of the Honourable High Court of Kerala.
- Annexure A24 - True copy of the Order No.939 dated 29.05.2014 Issued for the 5th respondent.
- Annexure A25 - True copy of the letter No. 7936/VIG/RTI ACT 05/22-A/2014-15 dated 21-09-2014 along with the

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Enclosure.

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| Annexure A26 | - | True copy of the Order dated 17.11.2014 issued on behalf of the 5 th respondent. |
| Annexure A27 | - | True copy of the representation dated January 2015 Addressed to the Under Secretary Ministry of Defence |
| Annexure A28 | - | True copy of the representation dated 24.11.2014 addressed to 5 th respondent by the applicant. |
| Annexure A29 | - | True copy of the letter No.7936/VIG/RTI ACT-05/-79/2012-13 dated 23.03.2013 along with its enclosure |
| Annexure A30 | - | True copy of the Letter No.12-1/CCD/2010 dated 30.09.2011 issued by the Deputy Chief Commissioner |
| Annexure A31 | - | True copy of the final order dated 25.02.1999 in O.A.Nos.648 and 649 of 1998 of the Madras Bench of this Honourable Tribunal. |
| Annexure A32 | - | True copy of the Order No.553 dated 15.04.2011 Issued for the 3 rd respondent. |
| Annexure R1 | - | True copy of the relevant extract of DOPT O.M. Dated 04.07.1997. |
| Annexure R2 | - | True copy of the DOPT Ordere No. F No.13012/1/98-Estt(D) dated 20.04.1998. |
| Annexure R3 | - | True Copy of the pay fixation proforma dated 27.05.2010. |
| Annexure R4 | - | True copy of the DOPT Order dated 20.11.1989. |
| Annexure R5 | - | True copy of the DOPT O.M. Dated 18.02.1997. |

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