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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00059/2016

Wednesday, this the 19th day of December, 2018

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

R.Sivakumaran Nair @ R.S.K.Nair,
Aged 60 years,
S/o V.Raghavan Pillai,
Krishnapriya,
near kallupalam,
Kadavanthra South - Kochi-20

....Applicant

(By Advocate Mr.A.T.Anil Kumar)

V e r s u s

1. Union of India
Represented by the Secretary,
to the Department of Defence
Central Secretariat,
New Delhi.
2. The Chief of Naval Staff,
(for DCP) IHQ,
New Delhi.
3. The Flag Officer in Chief,
Southern Naval Command,
Kochi.
4. The Admiral Superintendent,
NSRY, Naval Base,
Kochi.

...Respondents

(By, Mr.P.,R.Sreejith, ACGSC for Respondents)

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This application having been heard on 13th December 2018, the Tribunal on 19th December, 2018 delivered the following :

ORDER

HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

OA No.59/2016 is filed by R.Sivakumaran Nair, who retired as Junior Technical Officer, on 30.11.2015. Through the OA he claims that he ought to have been eligible for promotion to the next grade of Technical Officer with effect from May, 2015 onwards. The relief sought in the OA are as follows:

A] Direct the respondents to consider the petitioner as notionally promoted to Technical Officer from 30.5.2015 till his retirement on 30.11.2015 and disburse all service benefits on the basis of the pay of the Technical Officer.

B] Grant such other orders which may be prayed from time to time.

2. The applicant had been working as Junior Technical Officer until his superannuation on 30.11.2015. He had joined as Trademan in Grade-I on 05.05.1977 and had gone on to be promoted to the JTO level on 02.08.2010. He complains that at every stage in his career, there had been unnecessary delay while allowing him various stage promotions. While working as Junior Technical Officer, the officer had been appointed as Senior Administrative Officer on deputation on 01.05.2012. He worked in Naval Academy at Ezhimala for three years on deputation. He was denied extension despite recommendation made to the authorities by his Controlling Establishment.

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There upon he was working as Manager P&A at Kochi, which, according to him, was akin to the next promotion post of Technical Officer. Thus he had completed five years as JTO and he became eligible to be promoted as Technical Officer on 02.08.2015. However, respondents dragged their feet and did not move for promoting him. They did not convene the Departmental Promotion Committee in time and hence he had to retire without getting the promotion to the next level. It is also pertinent to note that at that stage there were atleast 10 vacancies of Technical Officers to be filled up and as per the seniority list, the applicant was second in rank (Annexure A4).

3. The applicant submits that he had been the recipient of several awards and commendations. He had, also as pointed out, worked as Senior Administrative Officer in NSRY, Kochi, which is equal in rank and pay as Technical Officer. He submits that he had been denied his promotion due to the inaction on the part of the respondents and he is entitled for notional promotion as Technical Officer on the date he became eligible for the post.

4. The respondents have filed a reply statement in which the contentions made by the applicant have been contested. The details of his service pointed out in the OA are admitted. It is as per the existing Recruitment Rules vide SRO 95/2003 (Annexure R1), that five years regular service in the grade of JTO is required to become eligible for the post of TO. The applicant completed five years requisite qualifying service in the grade of JTO only on 02.08.2015. It is

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further noteworthy to mention that in accordance with DOPT OM No.22011/6/2013-Estt(D) dated 28.05.2014, the crucial date of eligibility for any DPC is 1st April as the vacancy year is determined based on the financial year. Hence the applicant should have completed five years service prior to 1st April, 2015 in order to be considered for the vacancy year 2015-16.

5. Therefore, the applicant who completed five years regular service in the grade of JTO on 02.08.2015 is eligible for DPC year 2016-2017 vacancies as on 1st April, 2016. However, the applicant retired from service on superannuation on 30.11.2015 which was prior to his earning eligibility for the post of TO. Resultantly, the applicant could not be promoted to the grade of TO. Hence it is maintained that the OA has no merit. The other claims he has made about his deputation having been terminated without the extension recommended by his Controlling Officer etc are irrelevant to the issue being considered here.

6. We have heard the concerned Counsel who represented the applicant as well as the respondents. We have also considered various arguments and pleadings raised by both sides.

7. The issue here lies in a narrow compass. The respondents organisation is one in which the APAR of officers are maintained on financial year basis. This being so, the document at Annexure R2 is of particular importance. As per this

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OM the following has been stated.

.....“It has been decided that the crucial date of eligibility shall be 1st April of the vacancy year in case of financial year based vacancy year i.e. where the annual Performance Appraisal Reports (APARs) are written financial year-wise. In the case of calendar year based vacancy year i.e. where APARs are written calendar year-wise, the crucial date of eligibility shall remain as 1st January of the vacancy year. These instructions shall come into force in respect of vacancy year 2015-16 (financial year) commencing from April 1, 2015 and vacancy year 2015 (calendar year) commencing from January 1, 2015 and shall, accordingly be applicable to all such subsequent vacancy years.”

8. As per directions issued through this OM, it is apparent that the eligibility of the officer who had completed the five years required experience as JTO on the date that the applicant had completed the same, can be considered only for the vacancy year 2016-2017 and not for the previous year. Facts being so we are of the view that the OA lacks merit and deserves to be dismissed. We proceed to do so. No costs.

(Dated this the 19th day of December 2018).

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00059/2016

1. **Annexure A1** – True copy of the order passed by the respondents dated 18.03.2017.
2. **Annexure A2** – True copy of the recommendation dated 01.05.2012.
3. **Annexure A3** – True copy of the request dated 13.08.2015.
4. **Annexure A4** – True copy of the Seniority list dated 09.06.2015.
5. **Annexure A5** – True copy of the order dated 30.10.2015.
6. **Annexure A6** – True copy of the commendation dated 15.08.1990 while the petitioner working as foreman.
7. **Annexure A7** – True copy of the commendation issued to the petitioner while he was working as senior charge man dated 01.12.1983.
8. **Annexure A8** – True copy of the commendation issued by the Chief of the Naval Staff, dated 15.08.1991.
9. **Annexure A9** – True copy of the commendation issued by the Flag Officer Commanding-in-Chief, dated 04.12.1997.
10. **Annexure R1** – Copy of SRO 95/2003
11. **Annexure R2** – Copy of DOPT OM 22011/6/2013-Estt(D) dated 28.05.2014.
