

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A.NO.96 OF 2011

WEDNESDAY, THE 31ST DAY OF JULY 2013/9 TH SRAVANA, 1935

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)

HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER(A)

APPLICANT:

CPOAOF V.P.SINGH, AGED ABOUT 44 YEARS,
NO.164139 W, NAVAL INSTITUTE OF AERONAUTICAL
TECHNOLOGY, NAVAL BASE, KOCHI - 682 004.

BY ADV.SRI.V.K.SATHYANATHAN.

VERSUS

RESPONDENTS:

1. THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF DEFENCE ,
SOUTH BLOCK, NEW DELHI. - 110 011.
2. THE CHIEF OF NAVAL STAFF,
INTEGRATED HQRS.OF MINISTRY
OF DEFENCE (NAVY),
FOR PDOP/PDNAM/PDNT, NEW DELHI - 110 011.
3. FLAG OFFICER COMMANDING-IN-CHIEF,
HEADQUARTERS, SOUTHERN NAVAL COMMAND,
NAVAL BASE, KOCHI - 682 004.
4. THE COMMANDING OFFICER, INS GARUDA,
NAVAL BASE, KOCHI - 682 004.
5. THE DIRECTOR,
NAVAL INSTITUTE OF AERONAUTICAL TECHNOLOGY,
NAVAL BASE, KOCHI - 682 004.
6. THE COMMODORE, BUREAU OF SAILORS,
CHEETAH CAMP, MANKHURD, MUMBAI - 400 088.

BY ADV.SRI.K.M.JAMALUDHEEN, SENIOR PANEL COUNSEL

O R D E R

Lt.Gen.Thomas Mathew, Member (A):

1. The applicant, a serving Chief Petty Officer of the Indian Navy, Aviation Branch is aggrieved by the denial of promotion to the next rank of Master Chief Petty Officer by the respondents. This application has been filed before the Tribunal with a prayer to promote the applicant to the next rank along with his contemporaries and grant extension of service tenure as per Navy Regulations.

2. The applicant has averred that he joined the Navy on 09.01.1986 and after requisite training was qualified for maintenance and servicing of naval aircrafts. During the last 25 years he has held important and operational appointments in various naval units and establishments. He had also qualified in various advanced courses in Leadership, Management and Weapon Maintenance during this period. He was commended by the Flag Officer, Commanding in Chief on 15.08.2005 for his dedication, commitment and

professional competence of a very high order. During his entire career, he was never involved in any indiscipline or misconduct. In spite of his extra ordinary performance he was not promoted to the next rank of Master Chief Petty Officer (MCPO).

3. He had come to know from a Senior Officer of the Aviation Wing that he had lost points for promotion due to his posting at INS Tunir, a shore based missile maintenance and supply establishment. The same officer had told him that aviation Sailors like him posted to INS Tunir are not being awarded any sea service points for promotion to MCPO at par with aviation technical personnel posted at other aviation units. The applicant has contended that he was serving at INS Tunir during the critical time when he was under consideration for MCPO promotion. He was not awarded any sea service points while posted at INS Tunir for four years. While aviation technical personnel posted at INS Tunir are not awarded any sea service points, other aviation personnel posted at second and third line servicing

establishment are granted additional points at par with personnel posted on board ships.

4. It is averred by the applicant that for promotion to MCPO in the Air Ordinance Branch, the vacancies made available are very few when compared with other cadres of the Navy. Various points awarded in the Promotion Board are changed frequently which has also affected the promotion prospects of the applicant. He was thereby denied his eligible promotion as MCPO as well as three other consequential promotion and restricted his service to 28 years.

5. It is submitted that when the applicant was serving in INS Tunir in 2002, he had made a request to be posted out to any Aviation Unit or ship. However, the same was not considered on the premise that an existing policy required qualified personnel like him will not be transferred out before completing minimum period of 3 years there. He was posted out after 4 years by which time he had lost valuable points due to his posting at Tunir.

6. The applicant submitted a 'Redressal of Grievance' (ROG) to the authorities to find out his position in each of the three selection boards as well as his weakness which denied him promotion. Since he did not receive any satisfactory reply, he put up a detailed ROG through HQ, Southern Naval Command. On 26.05.2011, his Divisional Officer intimated him that his ROG had been rejected by Naval HQ. However, no copy of the letter was given to him. The applicant has submitted that he became a victim of the dual transfer policy of the Indian Navy, firstly not being granted any sea service points for MCPO promotion while posted to INS Tunir and secondly being kept at INS Tunir for four years during the crucial years of his promotion. Instead of getting 10 points he got only 6 points basically because of his posting to INS Tunir. Most of other CPOs considered along with him had 10 points. The applicant has also raised certain anomalies in the promotion policy that needs revision for better human resource management. In addition it has been contended that in

accordance with the Sixth Pay Commission recommendations, his grade pay has not been revised so far. Considering all these aspects, the applicant has prayed that:--

i) issue a declaration that the present practice of non awarding marks for a particular posting is discriminatory, illegal and against natural justice.

ii) issue a declaration that the respondents shall not issue orders superseding the Navy Regulation by which the rights of personnel are affected.

iii) issue a declaration that the applicant was eligible to be considered for promotion to the next higher rank MCPOAOF II along with his contemporaries and is eligible to be promoted along with them.

iv) issue a direction to the respondents to amend/modify the Orders on Human Resources related to promotion, extension of service tenure etc. considering the better career of the sailors, in consonance with the norms of the Navy Regulations on the subjects.

v) issue a direction directing the respondents to promote the applicant to the next rank MCPOAOF II along with his contemporaries retrospectively with all consequential benefits.

vi) issue directions to the respondents to grant extension of service tenure of the applicant as per the provisions contained in the Navy Regulations.

Vii) Award costs for this proceedings.

7. The respondents in their reply have averred that the applicant was considered for promotion to the rank of MCPO in 2007 for the third and final chance and has challenged the same after 3 years. He has not exhausted the alternate remedy available under Section 234 of Navy Act 1957 read along with Regulation 235 to 239 of Regulations for the Navy II (statutory). It is submitted that there is nothing special about the tasks assigned to him in the Navy or the courses attended by him during his service. In particular it has been stated that he had not qualified for Aircraft Mechanician course hence he was not detailed for

it. Commendation Certificates are issued to Sailors for performing a particular task like "duties of In Charge Sea Eagle Missile Preparation Shop" as in applicants case and appropriate weightage for that is given in promotion boards. Promotion to the rank of MCPO is based on inter-se merit among Sailors due for consideration and available vacancies. Applicant was not selected in the promotion board due to his lower merit vis-a-vis others considered along with him.

8. It is submitted that aviation Sailors like the applicant are posted at various units/establishment depending upon service exigencies. Sailors serving in operational aviation units or on board ships are given due weightage as compared to postings in shore establishments (Annexure R4). Postings at various headquarters, training establishments, INS Tunir, INS Kalinga, NCC units, Store Depots, foreign assignments and so on are not entitled for additional weightage. Regarding this the policy is uniformly applicable to all sailors and the applicant has not been discriminated. As a matter of policy, sailors are

generally rotated amongst entitled weightage units and others as per service requirements and sailors qualification. For promotion to MCPO a total of 10 years of Sea Service is considered for extra weightage. The applicant had almost 8 years service at INS Hansa earning him Sea Service points before he was posted to INS Tunir. He has never challenged his postings at any point of his service. It has been contended that applicant's comparison of himself with Artificer Sailor is misplaced and untenable. Recruitment, qualification, training pattern and promotion prospects are different for different types of entries in the Navy. Vacancies for promotions of a particular branch/cadre differ from others. The policy of MCPO selection has been well laid down in Navy Order 05/06 and has withstood the test of time. The respondents have denied the contention that weightage awarded for 'commendation' is changed frequently. Weightage is equally applicable to all candidates hence there is no question of the applicant alone being affected. It is also submitted that no orders have been

issued superseding Navy Regulation. The applicant has not pointed out any such orders.

9. It is averred that the applicant's contention that he was denied selection is untenable as he could not be promoted due to being low in inter-se merit. He was neither denied promotion nor his re-engagement. Sea service points are awarded based on a time tested policy introduced in 1992 and amongst those selected by the promotion board there are some with less sea points than the applicant. There are number of parameters considered by the promotion board and sea service points is just one of them. Weightage cannot be changed for one individual, any change made would have to be equally applicable to others also. Further, it is submitted that posting of naval personnel are based on the functional requirements and the applicant has not challenged any of his postings to any ship or shore establishment. There are number of rules, procedures and guidelines issued by the Naval HQs in the conduct of promotion boards. The applicant has not brought

out any element of bias by the promotion board. Policies are not changed frequently as alleged by the applicant. However, when evolving circumstances necessitate changes they are carried out deliberately after obtaining inputs from field units of Navy. The respondents have contended that no injustice has been done to the applicant. His case has been handled as per existing rules, regulations and procedures. His ROG was not made as per the regulations and once that was done, the ROG was replied to by Hqs, Southern Naval Command. The non promotion of applicant was in 2007 but the ROG was put up only in 2010. The applicant has not challenged the decision of HQs, Southern Naval Command till date before the Chief of Naval Staff.

10. The applicant in a rejoinder has asserted that his ROG was properly routed hence it is incorrect to say that he has not exhausted departmental remedies. Due to his posting to INS Tunir, he was not awarded sea service points for promotion which is a great loss to him as postings are beyond his control. The seven candidates selected for

promotion had higher sea service points as compared to applicant. It has also been pointed out that while personnel posted to INS Tunir are denied sea service points, there are other shore establishments which are less operational where sea service points are awarded. The applicant had received one 'Red Recommendation' and one C-in-C's commendation which is more than what has been awarded to his counterparts. In their additional reply, the respondents have maintained that there has been no irregularity in applicant's case. His promotion board was held on schedule, and the marks he and his contemporaries received for their various qualifications and achievements were considered in its totality. Based on the number of vacancies available and merit cum seniority, eligible candidates were approved for promotion.

11. We have heard both sides and perused the documents including the original copies of confidential reports of the applicant as well as his three promotion board proceedings . The applicant's main contention is that he had

failed to make the grade for the next rank due to the low marks he received in the various parameters that were considered by the board. In particular he has stated that due to his posting at INS Tunir between 2002 to 2006, he lost valuable sea service points being in a shore establishment. He had no control over his postings therefore he should have been given the full sea service points. He has also raised other issues regarding the policies on number of vacancies in each cadre, anomalies in weightage, constant changing of weightage, disparity in promotion prospects of different cadres in Navy, illegal orders superseding Navy Regulation and the need to amend/modify orders on human resource development. The respondents have adequately explained the stand of the Navy in these issues. We find that these are generic issues which do not directly affect the main contention of the applicant i.e. the denial of promotion to MCPO. It is for the Navy to consider these aspects on their merit.

12. We find that selection and promotion procedure

for selection to the rank of MCPO is spelt out in Navy Order (str)05/06. In this order in para 14, it has been stated that the selection board will be guided by Approach Paper forwarded by Naval Headquarters wherein service requirements are incorporated from time to time. It has been submitted by the respondents that weightage for the various parameters considered by the promotion board is based on the Approach Paper promulgated by Naval HQs.

13. It was a specific prayer of the applicant during the hearing that the Tribunal peruse the confidential report and the promotion board proceedings related to the three chances given to him and correct the injustice done to him.

A perusal of the Promotion Board proceedings show that the applicant was considered on three occasions along with his contemporaries. Details relevant to this case are as follows:-

(a) Promotion Board 1 held on 16.09.2005:

There were two vacancies and 12 candidates were considered. The applicant's merit figured amongst the lower

half of the candidates. Even if he was given full sea service points, he would not have made the cut off marks. At the same time others who were ahead of him and on receiving the full sea service points would go further above him. Hence even after receiving the full sea service points he would not have made the grade in this board.

(b) Promotion Board 2 held on 22.09.2006:

There were three vacancies and 14 candidates were considered. The applicant's merit position was at mid way as compared to others. Even if he was given the full sea service marks he would not have reached within the first three positions to make the grade for promotion.

(c) Promotion Board 3 held on 13.09.2006:

There were two vacancies and 12 candidates were considered. The applicant's merit position was very close to the two selected candidates. We also find that the applicant has been given the highest mark by the board out of ten points they awarded at their discretion, even then he was well short of the selected candidates. Even if he had been given full sea

service points, he would still not reach the two vacancies. There are few candidates below him who received much less sea service points who would then overtake his merit position.

14. While perusing the promotion board proceedings, we also removed completely the sea service point of all the candidates to see as to where the applicant stood in the merit. Even though there was no requirement for us to do this exercise, we found that even if the sea service points are given in full to everyone or removed totally, the applicant did not come within the merit to obtain one of the vacancies available. Thus it is clear that 'sea service' parameter alone would not have affected his promotion prospects. We find that overall merit is made up by parameters like professional knowledge and performance in courses, qualities of leadership including performance in PO(L) and CPO (M) courses, confidential reports, commendations, sea service, accelerated promotion recommendations and points awarded by the board. The

applicant has been considered for promotion as per existing orders and we do not find any infirmity in the proceedings.

15. We have found from the documents produced that there exist detailed instructions regarding award of points as additional weightage. These orders (Annexure R4) were issued in 1992 and has stood the test of time and there is no requirement for us to interfere with it. The applicant has not built up any case to show that the Naval HQs have passed orders superseding Navy Regulations. The Human Resource policies are to be formed and implemented by the concerned authorities based on the overall Government policies, aspiration of the environment and requirement of the service. No specific instance affecting the Navy as a whole requiring amendment has been brought to our notice in this case. Any policy affecting just an individual can not be asked to be changed or modified. We have therefore considered in detail the major contention of lower award of sea service points to the applicant and his non selection for the next rank. It is our considered opinion that the

applicant did not achieve the selection standard due to his overall performance compared to his contemporaries. It was not just one parameter alone that has lowered his merit. He has been given the weightage point as per norms and no injustice has been done in this case.

16. In the result the Original Application is dismissed.

17. Issue free copies. No costs.

Sd/-
LT.GEN.THOMAS MATHEW
MEMBER (A)

Sd/-
JUSTICE SHRIKANT TRIPATHI
MEMBER (J)

(true copy)

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Prl.Pvt.Secretary