



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders Reserved on : 01.12.2021	Orders Pronounced on : 05.01.2022
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Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.1207 of 2021
and
W.M.P.No.1365 of 2021

Vinod Kumar (M/29 years),
S/o Balwan Singh,
Pradhan Yantrik (ER 08515-H),
Presently serving in ICGS Rani Abbakka,
C/o Head Quarters, Coast Guard Region (E),
Rajaji Salai, Near Napier Bridge,
Chennai-600 009.

Residing at
House No.A01/03 CGRA Royapuram,
G.M. Petta Road,
Royapuram, Chennai-600 013.

.. Petitioner

Vs.

1. The Office-in-charge,
Bureau of Naviks,
Cheetah Camp, Mankhurd,
Mumbai, Maharashtra 400 088.
2. The Director General of Coast Guard,
Coast Guard Headquarters,
National Stadium Complex,
New Delhi-110 001.
3. The Secretary,
Ministry of Defence,
Room No.101, South Block,
New Delhi-110 011.



4. The Commander,
Coast Guard Region (East),
Rajaji Salai, Near Napier Bridge,
Chennai-600 009.

5. The Commanding Officer,
ICGS Rani Abbakka,
C/o Head Quarters,
Coast Guard Region (E),
Rajaji Salai, Near Napier Bridge,
Chennai-600 009.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent, in connection with the impugned order passed by him in 251/13, dated 19.03.2020, to quash the same and direct the respondents to promote the petitioner to the post of Sahayak Engineer and grant further and other consequential benefits.

For petitioner : Mr.M.Alagu Goutham for M/s.M.Muthappan

For respondents: Mr.D.Simon, ACGSC

ORDER

This Writ Petition is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent, in connection with the impugned order passed by him in 251/13, dated 19.03.2020, to quash the same and direct the respondents to promote the petitioner to the post of Sahayak Engineer and grant further and other consequential benefits.

2. The case of the petitioner is that he is a Diploma Holder and joined service in the rank of Yantrik on 24.01.2012 and was inducted in the First Batch Coast Guard in the Engineering Department. He was promoted subsequently as Utham Yantrik in January 2015 and finally promoted as Pradhan Yantrik on 01.01.2017 and further due for promotion to the post of Sahayak Engineer in January 2020.

3. According to the petitioner, every time when the promotion was effected, it was done on the recommendation of the Departmental Promotion Committee (DPC). According to him, he has fulfilled all the conditions for the next level of promotion as Sahayak Engineer.



4. The grievance of the petitioner is that, his junior has been promoted ahead of Sahayak Engineer and the said junior was promoted in September 2019. According to the petitioner, he was due for promotion as Sahayak Engineer in January 2020 itself.

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5. After coming to know of the promotion of his batch-mates, the petitioner appeared to have submitted a representation on 18.01.2020 to the fifth respondent. In response to the same, the impugned letter was issued on 19.03.2020 by the first respondent stating that the petitioner was "unfit" because of not meeting within the "requisite threshold". The petitioner was at a loss to understand as to why he was declared as "unfit", and therefore, submitted a detailed representation, dated 12.11.2020 to the respondents asking for details.

6. Although the petitioner enjoyed good record of service, he has not received any adverse entries, but still he was not found fit for unknown reasons. Challenging the above said order, dated 19.03.2020, and the consequential prayer for his promotion to the post of Sahayak Engineer, the present Writ Petition is filed.

7. In response to the Writ Petition, a detailed counter affidavit has been filed on behalf of the respondents. In the counter affidavit, the criteria that were adopted for promotion, had been succinctly and clearly stated in paragraphs 5 to 7, which are extracted hereunder:

"5. The Petitioner was due for promotion to the rank of Sahayak Engineer (ER) w.e.f. 01 Jan 2020. As per Annexure-II to Rule 20 of the Coast Guard (Seniority and Promotion) Rules, 1987, the Petitioner was meeting the following pre-requisite criteria to become eligible for consideration for promotion to the rank of SE (ER):-

Ser	Qualification	QR	Remarks
(a)	Very Good Conduct	03 Years	Qualified
(b)	Service Qualification	03 Years	Qualified
(c)	Sea Service	01 Year	Qualified
(d)	Professional Qualification	CHERA course	Qualified with 68.28% marks

Ser	Qualification	QR	Remarks
(e)	Swimming	NA	Qualified
(f)	Leadership Course	Yes	Qualified with 62.30% marks

6. In order to streamline award of promotion to deserving personnel for shouldering higher responsibilities and to ensure smooth functioning of the organization, a threshold for promotion to each rank has been instituted by the Competent Authority vide Coast Guard Headquarters letter NK/0110/1 dated 11 Jan 2002. The threshold is calculated by the DPC by taking into account two factors viz 75% of the annual numerical assessment by the Commanding Officer in the confidential reports during preceding five years and 25% of marks obtained by the individual in the promotion linked course/board. The percentage of attributes for calculation of threshold was amended by the Competent Authority vide Coast Guard Headquarters letter NK/0110/I, dated 26 Aug 2005.

7. The Petitioner was considered first time in DPC-02/2019 for promotion to SE(ER) and a total of 60 vacancies were released for utilisation for promotion to the rank of SE(ER). The Petitioner was graded 'Unfit' by the DPC as he did not meet the requisite threshold i.e. 75% for promotion to the rank of SE(ER) as stipulated in the Coast Guard Headquarters letter NK/0110/I dated 11 Jan 2002 and amended on 26 Aug 2005. The threshold achieved by the petitioner with respect to DPC-02/2019 was 74.90%. A total of 48 EPs were promoted to the rank of SE(ER) with respect to DPC-02/2019."

8. According to the respondents, the petitioner did not meet the "threshold requirement" of 75% for promotion to the rank of SE(ER) as stipulated in the Coast Guard Headquarters Letter in NK/0110/I, dated 11.01.2002 and amended on 26.08.2005. The threshold requirement achieved by the petitioner was only 74.90%,



little short of the required percentage for the subject promotion, and therefore, he was not considered for the promotion.

9. The learned counsel for the petitioner strongly objected to the statements made in the counter affidavit stating that, after the selection was conducted, the Rules of the Game were changed, which cannot be done. According to him, new criteria have been brought into the selection after selection was notified and such requirement cannot be insisted upon, which resulted in denial of appointment of the petitioner to the post of Sahayak Engineer.

10. At this, the learned Central Government Standing Counsel appearing for the respondents refuted the above contention stating that the criteria adopted by the respondents, have been followed uniformly in respect of the earlier selections also. This Court in W.P.No.11802 of 2010, by order dated 30.06.2014 (Om Veer Singh Vs. Union of India, represented by its Secretary to Government of India, Ministry of Defence, New Delhi and six others), in-extenso, dealt with the same criteria that were adopted for such promotion earlier conducted by the respondents herein.

11. Further, the learned Central Government Standing Counsel relied on the relevant Rules and Guidelines regarding promotion of the enrolled persons in Indian Coast Guard and submitted that the relevant Rules have been followed strictly without any deviation

12. Moreover, though the learned counsel for the petitioner relied on the decisions of the Honourable Supreme Court reported in 1972 (2) SCC 188 (State of Haryana Vs. S.J.Bahadur), 1991 (1) SCC 544 (A.K.Bhatnagar Vs. Union of India), 2001 (5) SCC 482 (Dr.Rajinder Singh Vs. State of Punjab), 2007 (15) SCC 129 (State of Orissa Vs. Prasana Kumar Sahoo) and 2007 (6) SCC 704 (Union of India Vs. Sangram Keshari Nayak), and also a Full Bench decision of this Court reported in 2011 (3) CTC 129 (The Deputy Inspector General of Police, Thanjavur Range Vs. V.Rani), upon perusing the said decisions, this Court is of the view that those decisions are distinguishable on facts and the same are not applicable to the facts of the present case.

13. But the learned Central Government Standing Counsel relied on paragraphs 11 to 18 of the order of this Court, dated 30.06.2014 in W.P.No.11802 of 2010 (Om Veer Singh Vs, Union of India, represented by its Secretary to Government of India,



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rank was introduced only w.e.f 30.06.2004. It is important to point out here that as per the guidelines in vogue, where one or more confidential Reports have not been written for any reason during the relevant period, the DPC should consider the available confidential Reports of five years preceding the period in question and if in any case even these are not available, the DPC should take into account the confidential reports of the lower grade to complete the number of confidential reports. If that is also not available numerical assessment recorded in service book/ACR and all the available confidential reports should be taken into account/ In this context, the details of numerical assessment of five years recorded in confidential report/Service Book by the DPC in the case of petitioner may be considered as given below.

Description	(a)	(b)	(c)	(d)	(e)	(f)	(g)
CR Year	2003	2005	2006	2007	2009	sum of (a) to (e) = (f)	(f) x 2 = (g)
Numerical Assessment	6.4	7	7.4	8	8	36.8	73.6
Total	10	10	10	10	10	50	100

Description	Higher Rank Board (a)	Petty Officer Leadership 'Qualifying' Course	Total (a) + (b) = (c)	Average (c) / 2 = (d)
Marks obtained	57.30	58	115.30	57.65
Total	100	100	200	100



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75% of numerical assessment	25% of professional course/board (b)	(a) + (b) = Total	Required threshold for promotion to Adhikari	Grading
75% of 73.6 = 55.2	25% of 57.65 = 14.41	69.61	75	UNFIT

16. A clear reading of the above facts, admittedly shows that even including the numerical assessment for the alleged period i.e., 21.03.2003 to 30.06.2006 which was missing as per the averments and allegations made by the petitioner herein, the petitioner could have secured threshold grading of only 69.68, which is also short of necessary threshold grading required for promotion i.e., 75.

17. As it is evident from the threshold arrived by DPC of 02/2009, after considering the five years ACR's and performance in relevant courses as per the methodology stipulated in the guidelines that the petitioner has not secured the necessary threshold grading as required, this Court is not able to find any merit in the writ petition.

18. In the result, the above writ petition is dismissed. There is no order as to costs."

14. The above extracted paragraphs of the order of this Court, clearly spelt out the criteria that were adopted even in the earlier selection, which appeared to have been applied in the present selection of the petitioner as well. Unfortunately, the petitioner appeared to have scored marginally less percentage that was required for his promotion.

15. The above extracted observations in the ruling of this Court, are self-explanatory, which do not require any elaboration or clarification.

16. In view of the ruling of the above order by the learned Judge of this Court in respect of the identical selection earlier in the Coast Guard, this Court does not think that the petitioner herein can have any legitimate grievance in assailing the impugned order, dated 19.03.2020 passed by the first respondent.



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17. Hence, the Writ Petition is devoid of merits and the same is accordingly dismissed. No costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar

CS

To

1. The Officer-in-charge,
Bureau of Naviks,
Cheetah Camp, Mankhurd,
Mumbai, Maharashtra 400 088.
2. The Director General of Coast Guard,
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+1cc to Mr.M.Muthappan, Advocate SR.No.1012

+1cc to Dr.D.Simon, Advocate SR.No.1342

W.P.No.1207 of 2021

AK-II(CO)

CB(20/01/2022)