

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.416/98.

Thursday, this the 23rd day of February, 2001.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.R.Gopinathan,
Working as Sukhani,
Balshel- Yard Craft Organisation,
Naval Ship Repair Yard,
Naval Base, Cochin-4.

(By Advocate Shri M.R.Rajendran Nair)

Vs.

1. Union of India represented by
Secretary to Government,
Ministry of Defence,
New Delhi.
2. The Flag Officer,
Commanding in Chief,
Southern Naval Command,
Naval Base, Cochin.
3. The Civilian Gazetted Officer,
Headquarters,
Southern Naval Command,
Naval Base, Cochin.
4. The Captain Superintendent,
Naval Ship Repair Yard,
Naval Base, Cochin. Respondents

(By Advocate Shri Govindh K. Bharathan, SCGSC)

The application having been heard on 23.2.2001, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

This application is directed against the order dated
7.3.97 of the first respondent by which after considering the
representation A-10 of the applicant's claim for promotion as

Tindal of Lascar w.e.f.23.12.94 the date on which all his juniors were promoted to that post, was turned down. The facts and brief contentions are stated as follows:

2. The applicant who started his carrier as Lascar at Base Repair Organisation on 2.12.1966 was promoted as Tindal with effect from 11.11.1982 and transferred to Launches. Though he was put incharge of Boat and was actually performing the duties of Syrang he was not given regular promotion despite the fact that he had the qualification prescribed for holding the post. The immediate higher post to the post of Tindal of Lascar was Sukhani and next promotion post is that of Syrang of Lascar. There were no Sukhani qualified for being promoted to the post of Syrang of Lascar. Five juniors of the applicant who were Lascars approached this Bench of the Tribunal claiming promotion to the post of Syrang of Lascar by filing O.A.553/93. After considering the rival contentions of the parties the Tribunal disposed of the application with the following directions:

Accordingly, we direct the respondents to fix a reasonable time limit from the date of receipt of the judgement for the aforesaid 11 seniors of the applicants to qualify the test and obtain the necessary certificate issued by the Mercantile Marine Department. It may not be a period longer than six months. If they fail to qualify and pass in the competitive examination within the prescribed time limit the applicants shall be appointed to the post of Syrang of Lascars if they are otherwise fit and eligible for the post. We also make it clear that the existing vacancies of Syrang of Lascars shall not be filled up by unqualified/ineligible hands till the compliance of the above directions. The application is allowed as above.

3. Accordingly, the five applicants in the above case were

given promotions as Syrang of Lascar. As the senior Sukhanis did not qualify within a period of six months the applicants in O.A.553/93 were promoted w.e.f. 23.12.94. Claiming that he being Tindal of Lascar and junior, the applicants in O.A.553/93 is entitled to be promoted as Syrang of Lascar, the applicant filed O.A.295/95 which was disposed of permitting the applicant to make a representation to the department and directing the respondent to dispose of the representation. Pursuant to the above judgement, the applicant submitted A-10 representation dated 30.7.96 explaining as to how he is senior to five applicants in O.A.553/93 and claiming that he should be given appointment as Syrang of Lascar w.e.f. 23.12.94. The impugned order has been passed by the first respondent considering in detail the representation made by the applicant point by point and turning down his request. Aggrieved by that the applicant has filed this application to have the impugned order set aside, for a declaration that non-consideration of the applicant for promotion as Syrang while persons in a lower grade were promoted as Syrang is illegal and unjust, that the applicant is entitled to be promoted as Syrang with effect from the date of promotion of his juniors/ Lascars and for a direction to the respondents to promote the applicant as Syrang with effect from the date of promotion of his juniors/ Lascars with all consequential benefits. The applicant has also prayed that it may be declared that he is entitled to get the pay of Syrang for the period during which he worked as Syrang and to direct the respondents to grant the arrears of pay with 18% interest, till date forthwith.

4. The respondents in their reply statement contend that the applicant was not working as Syrang of Lascar. The claim of the applicant for promotion to the post of Syrang of Lascar w.e.f. 23.12.94 the date on which the applicants in O.A. 553/93 were promoted is resisted on the ground that the said promotion was made in compliance with the directions of the Tribunal and that by appointment of the applicants in O.A.553/93 there was no post left in the grade of Syrang of Lascar where the applicant could be accommodated. It has further been contended that the applicant was not entitled to claim relaxation in age.

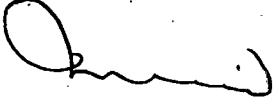
5. On a careful scrutiny of the materials placed on record and on hearing the learned counsel on either side, we are not satisfied that the applicant is entitled to the reliefs sought for. The respondents have contended that the applicant was not put to work as Syrang of Lascar but was appointed as Tindal and therefore the claim for wages of Syrang is baseless. Since the applicant has not established that he had worked as Syrang, his claim for the pay attached to the post of Lascar cannot stand. Coming to the claim of the applicant for appointment on promotion as Syrang with effect from the date of promotion of his juniors (Applicants in O.A.553/93) the contention of the respondents that the applicants in O.A.553/93 were given promotion granting relaxation in obedience to the order of the Tribunal and that as the available posts having been filled by their appointment, there is no further vacancy on which the applicant can be posted and that the applicant not being a party to that case, has no rightful claim, has to be accepted. The respondents were compelled to give appointment to the

applicants in O.A.553/93 as Syrang of Lascars on account of the binding decision of the Tribunal in that case. Though the applicant was holding the post of Tindal which was higher than that of Lascar held by applicants in O.A.553/93 did not diligently pursue his remedy, there is no case for the applicant that after appointment of the applicants in O.A.553/93, there was any post of Syrang left on which he could be accommodated. Hence, the applicant is not entitled for a direction to the respondents to promote him as Syrang w.e.f. the date of promotion of his juniors.

We are informed that the applicant has since been appointed as Syrang on 28.12.99. The applicant has to be contended with that in the conspectus of facts and circumstances.

In the result, the application is dismissed leaving the parties to bear their own costs.

Dated the 23rd February 2001


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

rv

Annexure A-10: A true copy of the representation dated 30.7.96 submitted by the applicant to the first respondent.