

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 45/2003

FRIDAY, THIS THE 1st DAY OF OCTOBER, 2004.

C O R A M

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. A.O. Rajeev S/o T.P. Janardana Kurup
Lascar, Sea Patrolling Unit,
Central Excise, Beypore, Calicut residing
at Illath House, Thenhipalam Post
Malappuram.
2. K.T. Francis S/o Shri Thomas, Sea Man
Sea Patrolling Unit,
Central Excise, Beypore, Calicut residing
at Kodoor House, Pasukkadavu Post,
Kozhikode.
3. A. Kamalesh S/o Raman,
Lascar, Sea Patrolling Unit,
Central Excise, Beypore, Calicut residing
at Araykachandakathu, Arakinar PO,
Maradu Beach, Calicut.
4. V.K. Deendayal S/o Vasudevan
Lascar, Sea Patrolling Unit,
Central Excise, Beypore, Calicut residing
at Valiayakamburam, West Hill Post, Calicut.
5. K.P.Susanth S/o Ashokan
Lascar, Sea Patrolling Unit,
Central Excise, Beypore, Calicut residing
at Kalluvachapurayil, Chemanchery Post
Kappad Beach, Calicut.
6. P. Pramod S/o Lokaprakash
Lascar, Sea Patrolling Unit,
Central Excise, Beypore, Calicut residing
at Payyeri House, Beypore PO, Calicut.
7. K.K. Ajayagosh S/o Lakshmanan
Lascar, Sea Patrolling Unit,
Central Excise, Beypore, Calicut residing
at Ajay Nivas, West Hill Post, Calicut.
8. P. Santhosh S/o Chathu Kutty,
Lascar, Sea Patrolling Unit,
Central Excise, Beypore, Calicut residing
at Pookatt, Kadalundi PO, Calicut.
9. K. Radhakrishnan S/o Nayadi
Lascar, Sea Patrolling Unit,
Central Excise, Beypore, Calicut residing
at Kuttiarchaayil House, Vallikunnu PO
Malappuram.

10. K. Shahaj S/o Sankaran
Lascar, Sea Patrolling Unit,
Central Excise, Beypore, Calicut residing
at Kamburath House, Kamburam, Kozhikode.

By Advocate Mr. Shafik M.A.

Vs.

1. Union of India represented by Secretary
Ministry of Finance
New Delhi.
2. The Chairman
Central Board of Excise & Customs
North Block, New Delhi.
3. The Chief Commissioner of Customs & Excise
Kerala Zone, Central Revenue Building
I.S. Press Road, Cochin-18.
4. The Commissioner of Central Excise
Kozhikode.
5. The Kerala Customs & Central Excise Grade-D
Officers' Association, Central Excise Head
Quarters, I.S Press Road, Kochi-18 Respondents

By Advocate Mr. C.B. Sreekumar ACGSC for R 1-4
Mr. Asok M. Cherian For R-5

The Application having been heard on 23.6.2004 the Tribunal
delivered the following on 1.10.2004.

O R D E R

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

If Lascars and Seamen come under the classification of Group-D staff of the Central Excise Department and if the A5 Recruitment Rules (1979) for promotion to the cadre of LDC set apart a 10% quota for the Group-D staff, then how could the applicants (Lascars and Seamen) be deprived of the opportunity of being considered for promotion to the rank of LDC by making applicable the A6 New Recruitment Rules (2002) in respect of vacancies that arose prior to 2002? This is the short issue the applicants (A.O. Rajeev and others) have raised. The crux of the matter is that the A6 new Recruitment Rules sought to restrict the promotional opportunity only to Havildars and Sepoys borne on the Group-D, while the earlier Recruitment Rule (A5) had allowed

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the opportunity to all Group-D staff and by this prejudicial differentiation, Lascars and Seamen got excluded from the scope of eligibility after the Revised Recruitment Rules came into force. The applicants have contended that since the vacancies in the cadre of LDC for which recruitment action was being taken only in December, 2002 (A1), arose prior to the introduction of the revised Recruitment Rules, the applicable Recruitment Rule would be the one in force prior to 2002 i.e. A5 Recruitment Rules of 1979. Thus the applicants seek the following reliefs:

(i) To call for the records relating to Annexure A1 to A6 and to quash Annexure A6 to the extent it infringes articles 14 and 16 by excluding all the other categories of Gr.-D other than Seapoys and Havildars in the matter of promotion to the cadre of LDC in the Central Excise and Customs Department.

(ii) To declare that the exclusion of all other categories of Gr.-D other than Havildars and Sepoys from the feeder categories for promotion to the post of LDC is discriminatory, arbitrary, illegal and violative of the Fundamental Rights guaranteed under Articles 14 and 16 of the Constitution of India and that applicants are eligible and entitled to be permitted to take part in the examination notified as per Annexure A1

(iii) To direct the respondents to promote the applicants to the post of LDC with all consequential benefits in case the applicants qualify in the examination conducted on 22nd to 24th of January, 2003 in which the applicants have participated as per the interim orders of this Hon'ble Tribunal dated 21.3.2003

(iv) To issue such other appropriate orders or directions this Hon'ble Court may deem fit just and proper in the circumstances of the case.

(v) To grant the costs of this Original Application.

2. The learned counsel for the applicants in a direct reference to Articles 14 and 16 of the Constitution of India argued that exclusion of a category of hitherto eligible

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employees from the ambit of consideration for future promotions is unconstitutional as it militated against the principle of equal opportunity, particularly when those affected were neither consulted nor was the rationale of such exclusion notified for inviting the objections of those affected. He pointed out that in pursuance of A5 Recruitment Rules, a large number of Lascars and Seamen had availed promotion to the rank of Clerks and some of them have by now reached the level of Inspectors in the Central Excise Department. A sudden withdrawal of the opportunity would by consequence deprive the eligible marine staff individually and as a class, of the fulfillment of a career expectation which was available at the time of their entry into service and for years thereafter, particularly when there has been no discernible change in the educational qualification or special functional criteria for the promotional posts. Even assuming that the restructuring of Department brought in its wake reclassification of grades and functions, it did not do away with the post of LDC or the channel of promotion leading from there. The applicants were eligible and waiting prior to the introduction of New Recruitment Rules, and there were vacancies all along until that time, in the Clerks grade, to which they could have been promoted under the old Recruitment Rules relevant to the vacancy years, had the opportunity of taking the examination been offered in time. The present examination, the learned counsel argued, related to earlier vacancies and so the governing Recruitment Rules have to be the A5 Rules and not A6 Rules. He submitted that all the employees in Group-D are equally placed and there cannot be any discrimination giving unfair advantage only to the category of Sepoys and Havildars within the same Group-D. He

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argued that the State being a model employer cannot be allowed to evolve a discriminatory policy to the detriment of one section of employees. While agreeing that the respondents possessing rule-making powers were undoubtedly competent to legislate even with retrospective effect to take away or impair vested rights acquired under existing law, he invited our attention to the Hon'ble Supreme Court's decision in State of Gujarat Vs. Raman Lal Keshav Lal reported in AIR 1984 SC 161 which held that law must satisfy the requirements of the Constitution. In the instant case, the learned counsel argued, the A6 Statutory Recruitment Rules failed to satisfy the requirements of the Constitution, even though these were legislated in exercise of the rule-making powers vested in the Government. He also referred to the judgment of the Apex Court in Kishan Mohan Lal Bakshi Vs. Union of India (AIR 1962 SC 1139) to fortify his contention that A6 rules, by differentiating without reason, have infringed Art. 16(1) of the constitution of India.

3. The learned counsel for the respondents categorically denied the existence of any promotional vacancy immediately prior to the date of notification of the New Recruitment Rules. There were only six vacancies under the Direct Recruitment Quota and hence the applicants have presumed incorrectly that they could have been promoted under the old Recruitment Rules had steps been taken in time. He rejected the contention of the applicants that the vacancy years fell prior to the year of recruitment. He explained that A-6 Recruitment Rules were framed on the basis of a policy decision of the Government taking into consideration the needs of the Department. Consequent on restructuring, all

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the LDCs in the pre-restructured cadre were promoted as Tax Assistants and subsequent to restructuring only 717 posts of LDCs were retained in the Department with a view to provide promotional avenues to Sepoys and Havildars. He submitted that Seamen/Laskars are deployed solely for the operation of vessels in the Customs (Preventive) Commissionerate and they constitute a different class within the group-D staff in Central Excise and Customs Department. Sepoys and Havildars are deployed in all the field formations and offices of the Excise Department, but not in the operation of vessels. Further, Seamen/Lascars have a separate and exclusive channel of promotion. The promotion channel for seamen is to the grades of Senior Deck Hand, Sukheni, Tindel and Skippermate, while the promotion channel of Laskars is to the grades of Greaser, Launch Mechanic, Engine Driver and Engineer Mate. Referring to the issue of denial of equality of opportunity, the learned counsel argued that as the Seamen/Laskars and Havildars/Sepoys belonged to two different classes within the same group, and as the promotional opportunity available exclusively to Seamen/Laskars was not available to Havildars/Sepoys, the A6 Recruitment rules sought to provide the opportunity to Havildars/Sepoys only, and hence there was no violation of either Art. 14 or Art. 16 of the Constitution. Inviting our attention to the structural adjustments undertaken by the Department in pursuance of overhaul measures initiated by restructuring, the learned counsel argued that consequent upon drastic reduction in the number of posts in the Clerk's grade, only a skeleton clerical outfit remained to meet the career aspirations of those who had no channel of promotions available to them. Havildars and sepoys belong to that category and by that

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criterion stand distinguished from the marine staff like Laskars/Seamen who have regular promotional opportunities available to them. In other words, until the A6 Recruitment Rules, the marine staff like Seamen and Laskars were having the opportunity of rising in their own line and also in the clerical line, while the Havildars/Sepoys had only the clerical line open for them, that too in competition with eligible marine staff. A-6 Recruitment Rules only gave shape to a policy imperative that recognised this difference in the context of restructuring.

4. Heard counsel for both parties. The first question we must answer is whether A6 infringes Articles 14 and 16 of the Constitution. The learned counsel for the applicants referred to the case of Kishori Mohanlal Bakshi Vs. Union of India (AIR 1962 SC 1139) to persuade us to accept his contention that Art. 16(1) of the Constitution is infringed when equality of opportunity is denied to Government servants holding different posts in the same grade. Should Group-D be seen as one grade consisting of many posts? In Harinandan Vs. S.N. Dikshit (AIR 1970 SC 40), 'Grade' has been defined thus: "a class or position in a class according to the value." 'Group' is defined in Aiyar's Law Lexicon as 'a number of persons or things existing or brought together with or without interrelation, orderly form or arrangement.' Thus, we hold that similar grades can be brought together under one group. Group-D is one such construct. We see no interrelation, orderly form or arrangement in bringing together Laskars/Seamen and Sepoys/Havildars. Laskars/Seamen work in Vessels of preventive Customs while Sepoys/Havildars work in offices of the Excise Establishment. Thus,

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Laskars/Seamen belong to one grade, while Sepoys /Havildars belong to a different grade, though within the same group. In Govind Dattatray Kelkar Vs. Chief Controller of Import and Export (AIR 1967 SC 839) the Hon'ble Supreme Court held thus:

" It is competent for the State to classify the employees for the purpose of promotion. In such a case, the Court can interfere only if the differences between the two groups of recruits are not sufficient to give any preference to one against the other, or in other words, there is no reasonable nexus between such difference and the nature of the office or offices to which recruitment is being made. In the absence of such nexus, any differentiation between members of the same cadre or class would be violative of Art. 14 and 16."

5. In regard to the applicability of the old Recruitment Rules, the question apparently has been answered by the submission of the respondents that prior to the introduction of the New Rules there were no promotee quota vacancies and hence the examination notification of 3.12.2002 (A1) was for vacancies that relate to the domain of the New Rules.

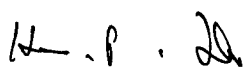
6. In regard to the ground of deliberate discrimination we are unable to accept the view that all employees in Group-D are similar for all purposes. The applicant has not disputed the fact that Seamen/Laskars have a direct channel of promotion in the marine line. Havildars/Sepoys are not eligible for competing with them in this line. That being the case, yet one more opportunity for promotion in the clerical line, would give the applicants only an added advantage. The fact that the old Recruitment Rules did in fact allow such an advantage for a long period, would not hold ground when a conscious policy decision is taken in the

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changed circumstances necessitating grant of career opportunity to a grade in Group-D to the exclusion of another grade in the same group which already has a channel for promotion exclusively available to it.

7. In the final analysis, having held that A6 Recruitment Rules do not infringe Art. 14 and 16 of the Constitution, and having found that there is no basis to allow the application of the old Recruitment Rules for promoting the applicants, we come to the conclusion that the Application has failed. We therefore, dismiss the Application leaving the parties to bear their own costs.

Dated 1.10.2004.


H.P. DAS
ADMINISTRATIVE MEMBER



A.V. HARIDASAN,
VICE CHAIRMAN