

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 470 of 2011**

*Thursday*, this the 02<sup>nd</sup> day of August, 2012

**CORAM:**

**Hon'ble Mr. Justice P.R Raman, Judicial Member**  
**Hon'ble Mr. K. George Joseph, Administrative Member**

1. Hamza Achechetta, S/o. Late Yousuf C.C.,  
aged 57 years, residing at Pakkidiyam House,  
Amini Island, Union Territory of Lakshadweep-682 552.
2. Liakathali P.I., S/o. Late Syed Mohammed Koya,  
aged 52 years, residing at Puthiyayillam House,  
Kalpeni Island, Union Territory of Lakshadweep-682 557.
3. H. Pookoya, S/o. Late Ahmed Koya, Halimapurayil House,  
Kalpeni Island, Union Territory of  
Lakshadweep-682 557. .... **Applicants**

**(By Advocate – Mr. M.R. Hariraj)**

**V e r s u s**

1. Administrator, Union Territory of Lakshadweep, Kavaratti.
2. The Shipping Corporation of India Ltd., No. 245,  
Madame Cama Road, Mumbai-400 021, represented by  
its Managing Director.
3. The Director (Port, Shipping and Aviation),  
Directorate of the Port Shipping and Aviation,  
Kavaratti Island – 682 555.
4. Union of India, represented by the Secretary to  
Ministry of Surface Transport, New Delhi.
5. The Secretary, Ministry of Shipping, Government of India,  
Transport Bhavan, 1, Sansad Marg, New Delhi-110 001.
6. M/s. Jairam and Sons, 45/364, G.V. Ayyur Road,  
Post Box No. 637, Willington Island, Cochin-682 003.
7. Master Ships, M.V. Tipu Sulthan,  
presently Berthed at Shed No. Q6, Mattanchery Warf,

Mattanchery, owned by 2<sup>nd</sup> respondent. .... Respondents

**[By Advocates – Mr. S. Radhakrishnan (R1&3),  
Mr. K.P. Vijayan (R2) – Not present &  
Mr. Sunil Jacob Jose, SCGSC (R4)]**

This application having been heard on 25.07.2012, the Tribunal on 02-08-12 delivered the following:

**ORDER**

**By Hon'ble Mr. K. George Joseph, Administrative Member -**

The applicants, three in number, were working as Seamen in “M.V. Tipu Sultan” owned by the Union Territory of Lakshadweep (UTL) and operated by Shipping Corporation of India, ever since 1989, 1990 and 1991 as the case may be. They proceeded on leave on different dates in the year 2010. On reporting for duty after availing leave they were not permitted to rejoin duty. As their representations were in vain they have filed this OA for the following reliefs:-

- i. To direct the 1<sup>st</sup> respondent to engage the applicants on board any of the vessels owned by it;
- ii. To direct the respondents to draw and disburse the pay and allowances of the applicants for the period for which they were kept out of service with interest @ 12% per annum till the date of disbursal;
- iii. Grant such other reliefs as may be prayed for and the court may deem fit to grant, and
- iv. Grant the costs of this Original Application.”

2. The applicants contended that the applicants are permanent employees of the 1<sup>st</sup> respondent as evident from Annexures A1 to A4 series. They were recruited as Seamen on a permanent basis to work on board the vessels owned by the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent is bound to engage them as

Seamen on board or in any of the other vessels owned by it. The refusal to do so is unjust, unfair, arbitrary and discriminatory. The 2<sup>nd</sup> respondent is bound by the agreement entered into by the 1<sup>st</sup> respondent to engage them on board M.V. Tipu Sultan. The anticipated decommission of the vessel is no ground to refuse permission to the applicants to join duty. The applicants were ready and willing to work and had made repeated requests to rejoin duty. They are entitled to the pay and allowances for the period they have been kept out of work for reasons not attributable to them. A number of juniors are working in the vessel owned by the 1<sup>st</sup> respondent. Laying off the applicants in preference to their juniors is against the principle of last come first go.

3. The 2<sup>nd</sup> respondent submitted that the applicants have already been permitted to rejoin duty on board M.V. Tipu Sultan.

4. The 1<sup>st</sup> respondent submitted that the applicants were not recruited by the UTL administration and the term "UTL crew" is used only to distinguish them from other home trade Seamen of Shipping Corporation of India posted and working in the vessel M.V. Tipu Sultan. The engagement of the Seamen in UTL vessels are not on permanent basis. There are 24 officials on board M.V. Tipu Sultan including the master of the vessel. The action on the part of the 2<sup>nd</sup> respondent in not allowing the applicants to join duty despite directions from the UTL administration is unfair. However, the 2<sup>nd</sup> respondent has allowed the applicants to attend duty on board the ship in the month of August, 2011 as per interim direction of this Tribunal. All the vessels owned by the UTL are being managed by the Lakshadweep



Development Corporation by deploying islanders having Continuous Discharge Certificate keeping in view that the local unemployed youth get employment. There are many candidates having Continuous Discharge Certificate waiting for employment in the UTL owned vessels when the ship M.V. Tipu Sultan gets decommissioned, the applicants' case for further engagement in other UTL owned vessels can be examined.

5. In the rejoinder statement filed by the applicants it was submitted that they were recruited on permanent basis to work in the vessels proposed to be owned by the UTL after getting exemption under Rule 42 of the Merchant Shipping (Seamen's Employment Office) Rules, 1986. This is evident from the offer letters issued to the 1<sup>st</sup> and the 3<sup>rd</sup> applicants.

6. In the additional reply statement the 1<sup>st</sup> and the 3<sup>rd</sup> respondents reiterated that the applicants were not appointed on permanent basis and they were engaged as additional crew as per the norms of the 2<sup>nd</sup> respondent and it cannot be claimed as regular absorption. The wages of the applicants are being paid by the 2<sup>nd</sup> respondent from the funds released by the 1<sup>st</sup> respondent for running and maintaining the ship M.V. Tipu Sultan which is now going to be decommissioned as scrap. When it is decommissioned the re-engagement of the applicants at par with other local Seamen by the Lakshadweep Development Corporation in accordance with their laid down rules and regulations can be taken up.

7. We have heard the learned counsel for the parties and perused the records.



8. From the facts of the case it is evident that the vessel M.V. Tipu Sultan is awaiting orders for decommission as scrap. There are 24 officials on board M.V. Tipu Sultan as on 22.7.2011. The 2<sup>nd</sup> respondent did not allow the applicants to rejoin duty in spite of a direction from the 1<sup>st</sup> respondent. This is unfair and unjust. However, they have been allowed to join duty in August, 2011 on the strength of an interim direction by this Tribunal. There are 26 vessels owned by the UTL which are being managed by the Lakshadweep Development Corporation by deploying islanders having Continuous Discharge Certificate. As soon as M.V. Tipu Sultan gets decommissioned the applicants' case for further engagement in other UTL vessels can be examined as per the say of the 1<sup>st</sup> and the 3<sup>rd</sup> respondents. As per Annexure A1 mutual agreement between UTL and Shipping Corporation of India it was stated that four Seamen were to be treated as employees of the UTL. It is not contested by the respondents that the applicants are included in the four seamen mentioned in Annexure A1. Annexure A2 offer letters show that the UTL was proposing to own vessels for plying between islands and to recruit crew on permanent basis. The 1<sup>st</sup> and 3<sup>rd</sup> applicants got their registration as foreign going seamen cancelled for the purpose of being absorbed in the UTL administration to work on board in vessel M.V. Tipu Sultan. All the three applicants were sent by the Shipping Corporation of India to M.V. Tipu Sultan as UTL Seamen as per Annexure A5. As per agreement their wages and allowances are paid from the funds provided by the UTL. Vide Annexure A11 fax message the Director, Ports Shipping and Aviation, UTL had directed the Shipping Corporation of India to continue the engagement of all existing UTL crews



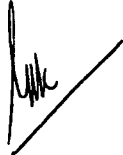
till the vessel M.V. Tipu Sultan is disposed of. All these would show beyond doubt that the applicants are UTL crew. M.V. Tipu Sultan is owned by the UTL. If it is decommissioned, in its place another ship may be commissioned. As of now there are 26 vessels owned by the UTL wherein crew much junior to the applicants are working. The applicants are experienced hands. They rendered useful services for over two decades. It stands to reason that their services should be utilized as long as they are fit and eligible to serve as per rules. They also belong to the UTL whose unemployment should also be a concern for the 1<sup>st</sup> respondent. Laying them off in preference to their juniors is a violation of principle of last come first go. It has been confirmed by the 1<sup>st</sup> respondent that when the ship M.V. Tipu Sultan is decommissioned the re-engagement of the applicants in any of the UTL owned vessels as Seamen at par with other local Seamen by the Lakshadweep Development Corporation and accordance with rules and regulations can be examined.

9. In view of the above the Original Application is disposed of as under:-
- The respondents are directed to continue the engagement of the applicants on board vessel M.V. Tipu Sultan till it is decommissioned like other officials on board. Upon decommissioning of the ship M.V. Tipu Sultan, the 1<sup>st</sup> respondent shall consider engaging the applicants in any of the vessels owned by the Union Territory of Lakshadweep as Seamen as per rules and regulations, giving due regard to their experience as Semen. As regards payment of pay and allowances to the applicants for the period for which they were kept out of service the applicants

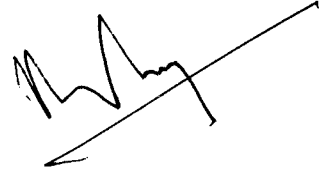


are directed to submit a representation to the 1<sup>st</sup> respondent for consideration and the 1<sup>st</sup> respondent is directed to pass appropriate orders as per rules within a period of two months from the date of receipt of the representation.

10. No order as to costs.



**(K. GEORGE JOSEPH)**  
**ADMINISTRATIVE MEMBER**



**(JUSTICE P.R. RAMAN)**  
**JUDICIAL MEMBER**

**“SA”**