

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.475/96

Tuesday, this the 17th day of March, 1998.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR SK GHOSAL, ADMINISTRATIVE MEMBER

T Chandrasekharan Nair,
Store Keeper,
Customs Marine Workshop,
Chaliyam,
Calicut-673 301.

- Applicant

By Advocate Mr K Divakaran Nair

Vs

1. Union of India represented by
the Secretary to Government,
Ministry of Finance,
New Delhi.
 2. The Director,
Directorate of Preventive,
Operations(Customs & Central Excise),
New Delhi.
 3. The Commissioner of Customs,
and Central Excise,
Ernakulam.
- Respondents

By Advocate Mr TR Ramachandran Nair, ACGSC(rep)

The application having been heard on 17.3.98, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

The applicant seeks to declare that he is entitled to
be regularised as Senior Store Keeper from 1.6.88 quashing A-16
and also to declare that he is entitled to salary of Senior Store
Keeper from 1.6.88 and grant him charge allowance of Store
Keeper from 12.5.92 onwards.

2. The case of the applicant is thus: He was recruited as Store Keeper in the year 1976. Since there was no vacancy of Store Keeper, he was appointed and posted as Assistant Store Keeper, as he was willing to accept the said post, as per A-2. He was expecting that he will be posted as Store Keeper as soon as a vacancy of Store Keeper arises. In May, 1988 he was transferred and posted in the vacancy caused by the retirement of Senior Store Keeper Shri VP Alexander on 31.5.88 in the Customs Marine Workshop, Chaliyam as per A-5. He was holding additional charge of Store Keeper from 12.5.92 onwards.

3. In the reply statement filed by the respondents, the contentions raised are thus: The applicant was initially appointed as Assistant Store Keeper, that according to the recruitment rules a Store Keeper with minimum five years of service in the post and subject to qualifying in the interview for the post of Senior Store Keeper is eligible to be promoted as Store Keeper, that an Assistant Store Keeper with minimum five years of service in the post and subject to qualifying in the interview for the post of Store Keeper is eligible to be promoted as Store Keeper, that the applicant being an Assistant Store Keeper can be promoted only as a Store Keeper in accordance with the provisions of the rules, and that since there is no post of Store Keeper within the framework of the above rules, the applicant cannot be given promotion though he has completed two decades of service.

4. Learned counsel appearing for the applicant drew our attention to A-1 dated 17.7.76 and A-5 dated 12.5.88. A-1 is a communication from Lieutenant, Indian Navy Workshop Manager to the Director Marine, Bombay. There it is stated that the applicant was interviewed earlier for the vacancy of Store Keeper

and placed on selection panel, was interviewed again and offered the vacancy of Assistant Store Keeper for which he was willing. It is needless to say that by virtue of selection one will not acquire a right to be appointed. So on the basis of A-1, the applicant cannot claim the post of Store Keeper. It is not known how the applicant got A-1. It is neither addressed to him nor a copy of the same is marked to him. Nothing is stated in the O.A. how the applicant was able to obtain A-1. It remains as a mystery.

5. A-2 dated 22.7.76 says that the applicant has been selected for the post of Assistant Store Keeper and has been posted at Ahmedabad Collectorate. A copy of the same was marked to the applicant. There is no dispute as to A-2.

6. Learned counsel appearing for the applicant very heavily relying on A-5 argued that the applicant was promoted as Senior Store Keeper. It will be worthwhile to extract A-5 in this connection:

"Shri TCS Nair, Asst. Store Keeper, who is working in Customs Marine Workshop, Versova, Bombay under Joint Director of Marine, Bombay is transferred and posted to Customs Marine Workshop, Chaliyam(Calicut) while Shri VP Alexander, Senior Store Keeper, retiring on superannuation on 31.5.1988."

It is very difficult to understand and appreciate the argument advanced by the learned counsel for applicant that by virtue of A-5, the applicant was promoted from the post of Assistant Store Keeper to that of Senior Store Keeper. There is no such word used in A-5 as 'promotion'. If it is a promotion, it will be specifically mentioned in the order that the concerned

incumbent is promoted to such and such a post from such and such a post. That apart, it is an undisputed fact that an Assistant Store Keeper cannot be promoted straightaway as a Senior Store Keeper. An Assistant Store Keeper can, if found eligible, get promotion as Store Keeper. Likewise, Store Keeper, if found eligible, can get promotion to the post of a Senior Store Keeper. It is also to be noted that it is not as a matter of right. It depends on various factors like exigencies of service, availability of vacancies etc. We are totally at loss to understand how on the basis of A-5, one can reach at a conclusion that the applicant was promoted as Senior Store Keeper from the post of Assistant Store Keeper. In our view by no stretch of imagination such a conclusion is possible to be arrived at.

7. Hence the argument advanced by the learned counsel for the applicant cannot be upheld.

8. There is a prayer for grant of charge allowance of Store Keeper from 12.5.92, i.e. prayer(c). Prayer (b) is to declare that the applicant is entitled to salary of Senior Store Keeper from 1.6.88. There can be instances where a Store Keeper is put in-charge of Senior Store Keeper and paying charge allowance, but it cannot be vice versa. It is the admitted case of the applicant that he is performing the duties of Senior Store Keeper with effect from 1.6.88. That being so, there is no question of he being put in-charge of Store Keeper. In A-8, it is certified that it is true copy of the original. As per A-8, the applicant was directed to take over charge of the office and stores immediately as Shri PE Stephanose, Store Keeper, so as to relieve the latter to proceed to Cochin on transfer and the

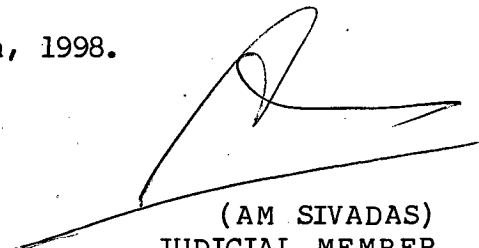
applicant will attend to the duties in addition to his own until alternate arrangements are made. This is issued by the Customs Marine Workshop Manager, Chaliyam, Calicut. Learned counsel appearing for the respondents submitted that in A-8, there is a mistake, that there is no post of Store Keeper at Calicut and that the post available is that of Senior Store Keeper apart from that of Assistant Store Keeper. The submission of the learned counsel for respondents can only be taken as true and correct for the obvious reason that in A-11 representation made by the applicant, it is specifically stated that "In the Customs Marine Workshop, Chaliyam there are sanctioned post of one Senior Store Keeper and one Assistant Store Keeper". So there cannot be any question of the applicant holding charge of Store Keeper at Calicut. That being so, this claim is highly illfounded. That apart, by virtue of Fundamental Rules 49(iv), in a case like this, no Government servant is entitled to any charge allowance or additional pay.

9. The result is that the O.A. is only to be dismissed.

10. Accordingly the O.A. is dismissed. No costs.

Dated, the 17th March, 1998.


(SK GHOSAL)
ADMINISTRATIVE MEMBER


(AM SIVADAS)
JUDICIAL MEMBER

trs/18398

List of Annexures

1. Annexure-A1: True copy of letter No.1/2-3/76 WSM dated 17.7.1976 sent by the workshop Manager, Magdalla Port to Director of Marine, Bombay, recommending to appoint applicant as Assistant Store Keeper.
2. Annexure-A2: True copy of Order No.60/76-DW dated 22.7.'76 posting the applicant as Asst. Store Keeper in Magdalla Workshop issued by Captain in Director(Marine) Bombay.
3. Annexure-A5: True copy of the order No.161/88.P&E dated 12.5.1988 of the Deputy Collector of Customs, Bombay transferring and posting the applicant as Senior Store Keeper Vice Shri P.V. Alexander, Senior Store Keeper, Customs Marine Workshop, Chaliyam with effect from 1.6.1988.
4. Annexure-A8: True of order No.6S/C/A/10/92 dated 12.5.1992 issued by the Workshop Manager, Chaliyam, placing the applicant in additional charge of store keeper.
5. Annexure-A11: True copy of representation dated 13.12.1994 submitted by the applicant to 3rd respondent.
6. Annexure-A16: True copy of the reply No.203/6/DPO(AS) 95/7783 issued by the Commissioner, Preventive Operations, New Delhi.