

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 553/93

Monday, the seventh day of March, 1994

MR. N. DHARMADAN (J)

MR. S. KASIPANDIAN (A)

1. P.R. Sahadevan, Lascar-I
Naval Ship Repair Yard, Cochin
2. A. Muhammed Yousuf, -do-
3. P.K. Dineshan, -do-
4. T.J. Henry, -do-
5. P.P. Chakkran, -do-

Applicants

By Advocate Mr. M.M. Saidumuhammed

vs.

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

Respondents

By Advocate Mr. S. Krishnamoorthy, ACGSC

ORDER

N. DHARMADAN-(J)

Applicants are Lascar-I, having more than twenty years of service under the second respondent. They are coming for the third time for getting promotion as Syrang of Lascar having regard to the fact that they are qualified and holders of certificate issued by the Mercantile Marine Department after having undergone a course and passed the examination.

2. According to the applicants for no fault of them they are denied promotion to the post of Syrang of Lascar but at the same time the work of Syrang were being got done by posting qualified/unqualified Tindals of Lascars depending upon the availability. Applicants

along with two others filed earlier case O.A. 14/87, which was disposed of by Annexure A-1 judgment dated 30.11.89. The operative portion of the judgment is extracted below:

"When persons like the applicants possessing MMD certificates, as admitted by the respondents themselves, operating the same boats are available to place these boats in charge of non-certificate holders in violation of the rules, is legally indefensible. This also exposes the applicants to hazardous working conditions. This also leads to demoralisation of the personnel in the Yard Craft Organisation. We would, therefore, close this application with the direction that the respondents should take within three months from the date of communication of his order final decision on the recommendation of the NSEC upgrading the posts of Tindal of Lascars to Syrang of Lascars and consider the applicants for holding of such posts on the basis of their seniority-cum-merit-cum suitability."

3. Thereafter, their grievances were neither considered by respondents nor were they promoted considering the seniority. Applicants filed O.A. 1056/91 which was disposed of by Annexure A-2 judgment dated 19.3.92. This Tribunal after adverting to Rule 6 of the Recruitment Rules which provides for relaxation issued specific direction which is extracted below:

"In the conspectus of the above facts and circumstances we dispose of this application with the direction to the applicants to file a joint representation to the first respondent through proper channel praying for relaxation of Recruitment Rules for promotion of MMD certificate holders as Syrang of Lascars, within two weeks from the date of communication of this order and we direct the first respondent to dispose of the joint representation so filed, in accordance with law, within a period of three months from the date of its receipt."

For getting relaxation as indicated in the judgment applicants filed Annexure A-3 joint representation dated 9.4.92. That representation was disposed of as per the impugned order dated 22.1.93. Nothing is mentioned in the impugned order dated 22.1.93, about the question

of relaxation. The reason given in that order is that applicants are not in the feeder category and 11 Sukhanis in the feeder category are awaiting for promotion to the post of Syrang of Lascar. But admittedly, they did not possess the requisite certificate for promotion.

4. The learned counsel for the applicants Shri M. Saidumammed submitted that respondents have not complied with the specific direction in the earlier judgments referred to above. They did not invoke Rule 6 of the Recruitment Rules for appointing them as Syrang of Lascars. It is further submitted that the vessels are being handled very often by unqualified persons resulting in accidents latest of which is recently reported in the 'Indian Express' dated 28.11.92, copy of it is produced as Annexure A-5. If qualified persons like the applicants are appointed such accidents would have been prevented. According to the applicants, the respondents have granted relaxation for effecting promotion to the post of Syrang of Lascar on earlier occasions. Two specific instances are pointed out by the applicants in the rejoinder. One Shri P.K. Narayanan Lascar-I class was promoted as Syrang of Lascar on 13.10.66 as per proceedings No. CE List No. 84/66 Sl.No. 17. Similarly, Sri P.K. Sadanandan who was holding the post of Mate on 5.1.82 after granting exemption. Both of them were not in the feeder category for promotion. Hence, applicants allege discriminatory treatment and violation of the provisions of Article 14 of the Constitution of India.

5. The facts are virtually admitted. But the applicants allege that after the judgment of this Tribunal, Annexure A-2, the second respondent has recommended the case of

the applicants for promotion to higher authority after granting relaxation of the rules in the exigency of service. This statement was not specifically denied by the respondents in the reply. In fact they have admitted that the applicants are qualified persons; but submitted that the applicants cannot be promoted because 11 seniors are awaiting promotion. But they cannot be promoted in the near future for they do not possess the certificate and they have not passed the test and according to the applicants they could not qualify in the near future. The applicants are qualified and stagnating in the post of Lascar-I after obtaining the Mercantile Certificate. It is only after considering these facts that this Tribunal has directed the respondents to consider the relaxation and appointment of the applicants to the post of Syrang of Lascar. That direction had not been complied with so far. We are at loss to understand why the applicants have not filed an application for taking contempt action against the respondents for their failure to comply with the direction in the earlier judgment.

6. However, since applicants have come for the third occasion and they have a genuine grievance, we are of the view that the applicants are entitled to reliefs in the light of the decisions in the earlier O.A. filed by them particularly because the applicants are stagnating in the post with higher qualification. According to us, their case deserves consideration in the light of the admission in the reply that applicants are posted occasionally even to work as Syrang by the respondents and the vessels are being operated now without the assistance of qualified hands. Relevant portion in the reply about the handling of vessels with unqualified hands is extracted below:

"The details of crafts/boats, category of personnel now manning these and the requirement in terms of Cochin Harbour Crafts Rules are appended below:

| Sl. No. | Category of craft/boat as per CHC Rules | Details of craft/boat | Requirement as per CHC Rules | Now operated by |
|---------|---|-----------------------------|------------------------------|-----------------|
| (a) | Less than 40 BHP | Whaler (673-A) 30.5 HP | T/Lascar | T/Lascar |
| (b) | 40 BHP to 225 BHP | FC Vahak (87BHP) | S/Lascar | S/Lascar |
| | | 42' Workboat 49 HP Sl. 1461 | S/Lascar | T/Lascar |
| | | 42' Work boat 49HP Sl. 674 | S/Lascar | T/Lascar |
| | | MSMB (Sl. No. 1429) 65 HP | S/Lascar | T/Lascar .. |

7. Having regard to the facts and circumstances of the case, we are of the view that the impugned order cannot be sustained in the light of Annexure A-2 judgment which is extracted above.

8. However, after considering the contentions, we are satisfied that the application can be disposed of with directions. Accordingly, we direct the Department to consider appointment of the applicants as Syrang of Lascar after invoking the relaxation clause contained in Rule 6 of the Recruitment Rules ^{and} after giving reasonable opportunity to their seniors to qualify for the promotion by passing the test.

9. In the result, we hold that the applicants are entitled to appointment as Syrang of Lascar invoking Rule 6 of the Recruitment Rules. At the same time, we would like to safeguard the interests of 11 Sukhanis who are seniors in the feeder category waiting for promotion to Syrang of Lascars. They should be given reasonable opportunity as indicated above to qualify themselves in the examination and obtain the certificate of Syrang Inland Steam vessel ^{to be} issued by the Mercantile Marine Department to enable respondents to promote them

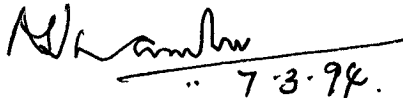
as Syrang of Lascars in preference to the applicants, considering their seniority if they duly qualify within the period as referred to above.

10. Accordingly, we direct respondents to fix a reasonable time limit from the date of receipt of the judgment 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 month. 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.

11. The application is allowed as above.

12. There shall be no order as to costs.


(S. KASIPANDIAN)
MEMBER (ADMINISTRATIVE)


7.3.94.
(N. DHARMADAN)
MEMBER (JUDICIAL)

7.3.94

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