

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.566/08

Friday this the 31st day of July 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

K.Chandran,
Artisan,
Customs Marine Workshop,
Chaliyam, Kozhikode.

...Applicant

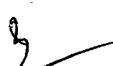
(By Advocate Mr.C.S.G.Nair)

V e r s u s

1. Union of India represented by its Secretary,
Department of Revenue, North Block,
New Delhi – 110 001.
2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi – 110 001.
3. The Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S.Press Road,
Cochin – 682 018.
4. The Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S.Press Road,
Cochin – 682 018.
5. The Commissioner of Customs (Preventive),
Central Revenue Buildings, I.S.Press Road,
Cochin – 682 018.
6. The Director of Logistics,
Customs & Central Excise,
7th Street, Shopping Centre,
Shanti Nikethan, New Delhi – 110 021.Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan, SCGSC)

This application having been heard on 31st July 2009 the Tribunal on the same day delivered the following :-



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ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has filed this O.A aggrieved by the entry in Column 9 of the Schedule to Ministry of Finance, Customs Marine Organisation, Customs and Central Excise Department (Group B Posts) Recruitment Rules, 2004 in respect of Engineer Marine to the extent that the educational qualifications prescribed for direct recruits are applicable to the promotees also. He has also relied upon the Annexure A-4 letters dated 21.5.1991 and 14.10.1991 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), New Delhi regarding relaxation of educational qualifications in the matter of educational qualifications granted to Ex-Servicemen. The said letters are reproduced as under :-

**RE-EMPLOYED – NOTE
EDUCATIONAL CONCESSION TO EX-SERVICEMEN FOR THE
PURPOSE OF PROMOTION**

Copy of Government of India, Min. of Personnel, Public Grievances and Pensions (Department of Personnel & Training), New Delhi, O.M.No.14023/1/90/Estt (D) dated 21st May 1991.

Sub : Concession given to Ex-Servicemen

The undersigned is directed to refer to this Department's Notification B.No.15012/8/82 – Estt (D), dated 12.2.1986 therein the qualification recognized as sufficient for Ex-servicemen for entry into services were inserted as sub rules (4) & (5) in Rule 6 of the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules 1979 (copy enclosed). It is clarified that the relaxation of educational qualifications granted to Ex-Servicemen for entry into services envisaged in this Department's notification of even number dated 12.2.1986 shall also apply for the purpose of promotion to the higher grade subject to the condition that no qualifications higher than which prescribed for entry in the feeder grade is laid down for the purpose of such promotion.

(Sd)
N.K.KESAVAN
Director

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Copy of Office Memorandum No.14023/1/1990 Estt Government of India, Min. of Personnel, Public Grievances and Pensions (Department of Personnel & Training) dated 14.10.1991.

OFFICE MEMORANDUM

Sub : Concession given to Ex-Servicemen

The undersigned is directed to say that in this department's Office Memorandum No.14023/1/90 – Estt (D) dated 21.5.1991 on the above subject, the words "subject to the condition that no qualifications higher than which prescribed for entry in the feeder grade is laid down for the purpose of such promotion" may be deleted and the sentence may be read as "it is clarified that relaxation of educational qualification granted to Ex-Servicemen for entry into services envisaged in this Department's notification of even number dated 12.2.1986 shall also apply for the purpose of promotion to the higher grade".

(Sd)
M.V.KESAVAN
Director

2. The brief facts of the case are that the applicant was an Ex-Serviceman. He was discharged from the Navy in August 1996 and since then he was drawing defence pension. At the time of discharge he was a Petty Officer. He was re-employed as Artisan in the Customs Marine Wing with effect from 25.3.1997. Artisans and Engineer Mates are identical posts. The only difference is that while they discharge duties in Marine Workshop, they are designated as Artisans and while doing duty in the Boats, they are called Engineer Mates. Their next promotion is to the post of Engineer (Marine). Annexure A-3 Recruitment Rules for Engineer Marine was published in the year 2004. The method of recruitment as per the said Rules is by promotion failing which by deputation or re-employment failing both by direct recruitment. Engineer Mate and Artisan (Marine) with 10 years of regular service in the grade are eligible for promotion as Engineer (Marine). The following educational qualifications prescribed for the direct recruits are applicable to promotees also :-



Essential

- (i) Degree in Mechanical Engineering; and
- (ii) Two years experience on Board a Mechanised Vessel

- (i) Diploma in Mechanical Engineering; and
- (ii) Four years experience on Board a Mechanised Vessel

Desirable

- (i) Certificate of First Class Engine Driver of a fishing vessel issued by a Mercantile Marine department of Government of India.
- (ii) Passed certificate exam in safety and survival or fire fighting or first aid from Director General Shipping approved institutes.

Note 1. Qualifications are relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified.

Note 2. The qualification(s) regarding experience is or are relaxable at the discretion of the Union Public Service Commission in case of candidate belonging to Scheduled Castes or Scheduled Tribes. If at any stage of selection the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the posts reserved for them.

According to the applicant, it is unjust, illegal and arbitrary to apply the educational qualifications prescribed for direct recruits candidates for promotees. He has also submitted that in terms of Note 1 above, the qualifications are relaxable at the discretion of the UPSC in case of candidates otherwise well qualified. The applicant has annexed Annexure A-5 seniority list of Artisan as on 1.1.2001 published by the 1st respondent on 21.5.2001. The applicant's name was at Sl.No.4. Shri.Viswanatha Kurup.P whose name was at Sl.No.1, retired on 31.1.2008 and Shri.Jaya Prakasan.A who was at Sl.No.2 does not possess the required educational qualification and he was not an Ex-Serviceman. Shri.Raveendran P.M who was at Sl.No.3 was an Ex-Serviceman. Therefore, the applicant was the 2nd person entitled for promotion as Engineer (Marine). He has submitted that there are at present two vacancies of Engineer (Marine) at Kozhikode and the DPC to fill up those vacancies was being held. According to him,



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the contents of the Annexure A-4 circulars were not brought to the notice of the DPC and, therefore, there was every likelihood of overlooking him on the ground that he does not possess the required educational qualifications prescribed for direct recruits.

3. The respondents in their reply submitted that the Recruitment Rules for Group 'B' posts are restructured and framed from time to time by the Ministry of Finance, Department of Personnel & Training, Ministry of Law and Justice and Union Public Service Commission as per the need of the Marine Department in view of the advancement in technology. Therefore, the new Recruitment Rules for Group 'B' posts framed and notified vide GSR No.142 (E) dated 25.2.2004 are based on the future requirements of personnel to operate and maintain the state of art modern vessels, which the Department is in the process of acquiring. Personnel with higher educational qualifications and experience are required to efficiently operate and maintain these vessels. This is in line with the statutory requirement in the field of sea going vessels operated by Indian Navy, Coast Guard and Department of Fisheries including that of Merchant Ships. Therefore, the educational qualifications required for Direct Recruits, Re-employed persons and Promotee have to be at par and that cannot be relaxed for the benefit of one individual person. They have also raised objection that the applicant has not represented the matter through proper channel for consideration of relaxation of Recruitment Rules for considering him to the post of Engineer (Marine). Educational/Technical qualifications which are essential eligibility requirements are neither relaxed in a routine manner nor it is administratively expedient or justified.



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4. As the counsel for the applicant Shri.C.S.G.Nair was not available, we did not have the opportunity to hear him. However, we have perused the documents available on record and also heard the counsel for the respondents. According to the applicant, fixing same educational qualifications for direct recruits and promotees are unjust and illegal even though there is a provision for relaxation of the educational qualification in individual cases in the Recruitment Rules. The respondents have, however, submitted that the educational qualification for direct recruits and promotees are restructured because of the need of the Marine Department in view of the advancement in technology. According to them, in line with the statutory requirement in the field of sea going vessels operated by Indian Navy, Coast Guard and Department of Fisheries including that of Merchant Ships, personnel with higher educational qualifications and experience are required to efficiently operate and maintain these vessels. Therefore, they have stated that there is no question of any relaxation of Recruitment Rules in favour of any individual officer.

5. This Tribunal had the opportunity to consider the very same issue raised in O.A.598/06. The applicant in the said O.A was a retired Skipper Mate from the Marine Wing of the Customs and Central Excise Department in Sea Patrolling unit at Beypore, Calicut. He joined the Indian Navy in 1964 and after a service of 9 years and 9 months while working as Leading Seaman he joined the Customs and Central Excise Department on 23.11.1974 as Senior Deck Hand in Bombay Customs (Preventive) Collectorate. There was no Recruitment Rules for the marine staff at the time of his appointment during 1974 for augmenting anti-smuggling work.



Later, he was promoted as Sukhani on 12.6.1995 and then as Skipper Mate on 30.12.1997. The new Recruitment Rules for Marine Staff was notified in 2004. The educational qualification prescribed in the Recruitment Rule cannot be obtained by the applicant or those similarly situated persons because the course mentioned in Annexure A-11 was conducted by the Mercantile Marine Department for the persons doing training in the fishing vessels. Only those who have joined the Customs Department as a fresh candidate could obtain such certificates. As the applicant was not promoted, he filed O.A.143/05 and vide order dated 28.11.2005 this Tribunal directed the 1st respondent to take a decision on the proposal for relaxation which has been forwarded to them. The respondents have not taken any decision, therefore, he filed O.A598/06 (supra). After considering the merits of the case and based on the various judgments of the Apex Court on the issue, this Tribunal vide order dated 25.7.2007 quashed the impugned order therein to the extent that the educational qualification prescribed for appointment as Skipper are made applicable to promotion also. The respondents were directed to consider the applicant and others in the light of the observation and direction above, without applying the educational qualifications newly prescribed in the Rules and promote the applicant therein to the post of Skipper, if he is otherwise eligible on a notional basis and grant him all consequential benefits including retiral benefit arising from such promotion.

6. We have considered the issue. Admittedly there is a provision for relaxation in the Recruitment Rules and qualifications are relaxable in the cases of those candidates who are otherwise well qualified. The said



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provision has been incorporated in the rules to invoke it in appropriate cases. The requirement of the respondent department and the promotional prospects of its employees are equally important. If they are well equipped to hold the promotional post, even if they do not have the prescribed qualification, their cases has to be considered in the light of the relaxation provision contained in the Recruitment Rules. We, therefore, direct the applicant to make a self-contained representation to the competent authority for relaxation of the Recruitment Rules in his favour and if such a representation is received, the said authority shall ensure that the applicant's representation receives due consideration by the selecting authority, whenever the post of Engineer (Marine) is filled up in due course.

7. With the aforesaid direction, the O.A is disposed of. There shall be no order as to costs.

(Dated this the 31st day of July 2009)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER