

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO. 598/2006

WEDNESDAY, THIS THE 25th DAY OF JULY, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

A.A. Jayanthan, Skipper Mate (Retd)
Arackaparambil House, Ochamthuruth
Puthuvaipu PO, Cochin-682 508

..Applicant

By Advocate Mr. CSG Nair & Chandini G. Nair

Vs.

- 1 Union of India represented by the Secretary
Department of Revenue, Ministry of Finance
North Block, New Delhi-110 001.
- 2 Chairman, Central Board of Excise & Customs
North Block, New Delhi-110 001
- 3 Chief Commissioner of central Excise & Customs
Central Revenue Buildings, IS Press Road,
Cochin-18
- 4 The Commissioner of Central Excise & Customs
Central Revenue Buildings,
IS Press Road,
Cochin-18
- 5 The Commissioner (Logistics) Customs &
Central Excise
IV Floor, A Wing, Lok Nayak Bhawan,
Khan Market, New Delhi-110 003

..Respondents

By Advocate Mr. Sunil Jose, ACGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is a retired Skipper Mate from the Marine Wing of the Customs and Central Excise Department in Sea Patrolling unit at Beypore, Calicut. He is an Ex-Naval person. He joined 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. While in Navy he had navigational experience as he was in the Navigational Direction School at Cochin as a staff. He had 6 years sea going service in various ships including aircraft carrier INS Vikrant. Only Ex-Naval personnel were appointed as Marine Staff in the Customs and Central Excise Department in all cadres. While making the selection in the Marine Wing the experience and rank held in the Navy were the only consideration for appointment. There was no Recruitment Rule for the marine staff at the time of applicant's recruitment during 1974 for augmenting anti-smuggling work. The applicant was transferred to Cochin Central Excise and Customs Commissionerate along with the vessel in which he was working during 1975. The applicant was promoted as Sukhani on 12.6.1995. As another employee who was not qualified was promoted as Skipper Mate, the applicant filed O.A. NO. 1005/1995 before this Tribunal. This Tribunal allowed the O.A. by order dated 8th August, 1996 Annexure A-2). The applicant was promoted as Skipper Mate w.e.f. 30.12.1997. There are two types of Boats in the Department of

Customs and Central Excise, the Customs Patrol Craft (CPC) and the Customs Auxiliary Crafts(CAC). The Staff position in the CPC is as follows:

<u>Operational side</u>	<u>Engineering Side</u>
Skipper	Engineering
Skipper Mate	Engineer Mate
Senior Deck Hand	
Seaman (5)	Seaman

The superior authorities have directed the applicant to discharge the duties of Skipper for the vessel CPC Jayanthi in which the applicant was working as Skipper Mate. In obedience to Annexure A-6 order the applicant was discharging the duties of Skipper since 1987 without any additional emoluments. The applicant submitted a representation to the Commissioner of Central Excise and Customs, Calicut who was the Head of the Department during that period with a request to promote him as Skipper (Annexure A-10). The applicant did not receive any reply to Annexure A10. It is submitted that a new Recruitment Rule 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 is conducted by the Mercantile Marine Department for the persons doing training in the fishing vessels. Only those who joined the Customs Department as a fresh candidate can obtain this certificate. Unfortunately the authorities have not taken this fact into consideration while making the rule in such away that the educational qualifications prescribed are the same for both direct recruits as well as

promotees. As the applicant was not promoted, he filed O.A. No.143/05 before this Tribunal. As per 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 4th respondent issued a letter C. No. II/Misc/12/2005/Legal Chn. dated 9.5.2006 (A15) stating that no relaxation can be made in the Recruitment Rules for promoting the applicant. Hence he has filed this O.A. praying for the following reliefs:

- (i) To quash Annexure A-11 to the extent that the educational qualification prescribed for appointment as Skipper is being made applicable for promotion also.
- (ii) To call for the records leading upto Annexure A-15 and quash the same
- (iii) To direct the respondents to relax the Recruitment Rules for promotion to the post of Skipper and promote the applicant as skipper.
- (iv) To direct the respondents to promote the applicant as Skipper retrospectively and grant all consequential benefits including the retiral benefits.
- (v) Grant such other relief/reliefs that maybe prayed for or that are found to be just and proper in the nature and circumstances of the case.
- (vi) Grant cost of this O.A.

2 The respondents have admitted that the Recruitment Rules namely, Marine Organisation of Customs and Central Excise Department (Group-C and D posts) Recruitment Rules, 1994 were re-framed vide GSR No. 662 dated 31.12.1994 superseding the earlier

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Recruitment Rules notified vide GSR No. 600 dated 16.8.1986 and GSR No. 842 dated 4.10.1986 and while doing so rules for the post of "Skipper" in Group-B post were not included. The recruitment for Group-B post in the Marine Organisation of Customs and Central Excise Department in which "Skipper" post included was published vide Notification GSR No. 142(E) dated 25.2.2004. The letter No. 00102 dated 31.12.1982 by the Joint Director (Marine) Bombay produced as Annexure A-9 was a letter issued for working arrangements for operational availability of the boat and it cannot be relied upon as an order as contended by the applicant for the purpose of any promotion namely "Skipper". It is true that the prescribed educational qualification for re-employed persons and the Direct Recruits have been kept for Promotees also. The Recruitment rules for Group-B posts are restructured and framed time to time by the Ministry of Finance, Department of Personnel & Training, Ministry of Law and Justice and UPSC as per need of the Marine Department in view of the advancement of technology of the Departmental vessels being used in combat with the advanced and fast speed vessels used by the smugglers. There is no evidence placed in the O.A. that the applicant has represented the matter through proper channel for consideration of relaxation of Recruitment Rules for considering him to the post of Skipper. However, pursuant to the directions of this Tribunal in O.A. No.143/05, the matter was considered in the Department of Revenue, Ministry of Finance, Government of India. Relaxation of educational and technical qualifications which are essential eligibility requirements

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are neither relaxed in a routine manner nor it is administratively expedient or justified.

3 We have heard Shri CSG Nair, the learned counsel for the applicant and Ms Viji the proxy counsel appearing for the respondents and have gone through the pleadings carefully.

4 This is the third round of litigation in so far as this applicant is concerned. At every stage of his career spanning more than 30 years, he had to knock at the doors of this court to get his promotions, all because the respondents did not frame recruitment rules for these posts in time. The present OA is filed for consideration of his promotion to the post of Skipper which is a Gr. B post which was lying vacant since 1987 and which was being manned by the applicant throughout, though he was designated only as a deckhand. Admittedly, the recruitment rules for the post of Skipper were published vide notification dated 25.2.2004. The DPC met on 28.2.2005 and selected two candidates junior to the applicant and the applicant's case was rejected on the ground that he did not possess the qualifications required for the post. Out of seven Skippermates which is the feeder category for the post of skipper, borne in the cadre of the Department having the requisite experience as per the Recruitment rules, only two were found eligible for promotion. The applicant was also called for the interview but it is stated by the respondents that he was not found fit due to "non filling of prescribed educational qualifications and experience as prescribed in the Recruitment rules notified in 2004."

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5 The short question arising out of the pleadings here is whether the educational qualifications prescribed in the present recruitment rules promulgated in 2004 can be made applicable to this applicant who joined the Department in 1974 when there were no rules governing any posts. To answer this question, we have to go into the origin of these rules and the past record of this case. It is admitted that there were no rules for the marine staff at the time of recruitment of the applicant in 1974. The applicant is an ex-Navy person and after serving in the Navy for about 10 years, he joined the Customs & central Excise Department on 23.11.1974 as a senior Deckhand. At that time only ex-naval personnel were being appointed as marine staff in the Customs and central excise department in all cadres. The department took almost two decades to finalise the Recruitment Rules and an integrated cadre structure and common recruitment Rules for all the staff in marine establishment in Gr. C & D were brought in position in December 1994. But even then, the Rules for Gr. B posts like "Skipper", were not included. The Rules for Gr B posts were issued vide notification GSR No 142(E) dated 25.2.2004. During all these years, the personnel recruited earlier without Rules were continuing and at every stage they had to agitate their case before the courts on matters of promotion to the higher cadres. For eg. the applicant had to file OA1005/95 for counting his experience for promotion as Skippermate as by the Rules introduced in 1994, the respondents had added two levels in between these posts thus blocking his promotion. The OA was allowed and the applicant was promoted as Skippermate with effect from 1997. It is also on record that he had been manning the

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CPC Jayanthi since the retirement of the regular Skipper in 1987 even though he was designated only as a senior deckhand. This has been admitted by the respondents that for administrative reasons. He has discharged the duties of the post as authorized by the respondents themselves in Annexure A-6. The respondents say that this does not entitle him to promotion to the post. May be, but the apex court has held in a number of cases that an employee discharging the duties and functions of a post carrying higher responsibilities is entitled to the higher emoluments attached to that post. The respondents have denied the same to the applicant and he may not have agitated for it. Two cases in point are:

(i) Jaswant Singh Vs. Punjab Poultry Field Staff Assn. (2002)
1 SCC 261 wherein it was held that

".....given the fact the appellant had discharged the duties of a Chick Sexer he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties."

(ii) Selvaraj Vs. Lt. Governor of Island, Port Blair (ii)(1998)
4 SCC 291 wherein it was held that

"Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee."

6 Even if that question is kept aside, the unfair and unjust treatment meted out to the employees in their career opportunities by the delay

caused in bringing out proper recruitment Rules and then applying the rules to the staff recruited three decades earlier and on the verge of retirement, is glaring and cannot be brushed aside by pleas of technical nature like purchase of new ships, advancement in technology etc. It was in this context that we directed the respondents to consider the relaxation of the rules in the applicant's case as such a power is vested with them in the rules itself, but by the impugned order in this OA, the respondents have rejected it as not justified or administratively expedient. Normally when Recruitment Rules are made bringing in higher qualifications for eligibility for promotion due to changed requirements of the administration, a saving clause is always introduced to protect the interests of employees who were recruited earlier, or giving them a reasonable time for acquiring the higher qualifications. Similarly, it is the general principle followed in all Recruitment Rules that the higher educational qualifications prescribed for direct recruits are not made applicable to Promotees mutatis mutandis, but a balancing process is adopted by prescribing a longer period on the experience side for the promotees. None of these principles was followed by the respondents. They have stated in their reply that the new recruitment Rules are based on future requirements of personnel to operate the state of art modern vessels, the Department is acquiring shortly which need personnel with higher educational qualifications and experience and therefore the requirement for promotees and direct recruits have been kept on par. No doubt the respondents can apply these criteria when they acquire new vessels, but they should have applied their mind to the problem that when 50% of the posts are to be filled by promotion, whether, the

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existing employees are capable of acquiring these higher qualifications. If impossible requirements are introduced into the Rules at the fag end of their careers, affecting them adversely, certainly that has to be construed as an arbitrary exercise of power. This Tribunal had been pointing out this to the respondents consistently in all our orders, but the respondents have turned a deaf ear to our exhortations. Hence though we are very much aware of the legal position that the courts should not normally interfere with the recruitment rules which is the policy domain of the administration, we think that this is a fit case for a positive direction to give relief to the applicant by relaxing the rigour of the Rules in his favour. In Ashok Kumar Uppal Vs State of J&K, referring to its earlier judgements in J.C Jadav Vs State of Haryana and, State of Maharashtra Vs Jagannath Achut Karandikar: the Apex Court has held as follows:

"In view of the above, the Government can exercise the power to relax the rules in all those cases in which hardship is caused in the implementation of those rules to meet a particular situation or where injustice has been caused to either individual employee or class of employees. Of course this power cannot be exercised capriciously or arbitrarily to give undue advantage or favour to an individual employee."

7 An opportunity was given to the Respondents to exercise this power vested in them. But they have not chosen to consider the matter in the proper perspective. The applicant has since retired from service. He had been discharging the duties of the higher post all these years to the satisfaction of all and there is no adverse comment on his work. But his juniors have been promoted and he had to retire from the lower post. We are therefore of the view that this is an eminently suited

case for interference with the Recruitment Rules promulgated in April, 2004 by which a higher qualification of a certificate from the Mercantile Marine Department had been prescribed which could not have been acquired by anyone before the DPC met on February 2005 on grounds of arbitrariness and violation of natural justice.

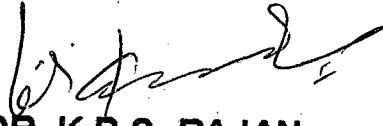
8 The following directions are accordingly given:-

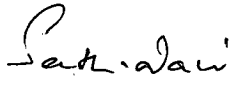
(i) Annexure A-11 is quashed to the extent that educational qualifications prescribed for appointment as skipper are made applicable to promotion also.

(ii) The respondents shall conduct a Review DPC and 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 to the post of skipper if he is otherwise eligible on a notional basis and grant him all consequential benefits including retiral benefits arising from such promotion.

9 OA is allowed. No costs.

Dated 25.7.2007.


DR. K.B.S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN