

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 611 /2006

THIS THE 5th DAY OF NOVEMBER, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER**

P. Gopalakrishnan S/o late Parakkat Narayanan Nair
Engineer, Workshop Manager,
Customs Marine Workshop,
Chaliyam, Kozhikode-673301
residing at Chirag, Naduvaattam,
Beypore North PO, Kozhikode-673 015

..Applicant

By Advocate M/s Shafik M. Abdulkadir,
K.M.Anthru, Shemeena Salahudheen,Safiya Shafik,
PC Kunjappan & Simla Prabhakaran

Vs.

- 1 Union of India represented by Secretary
Department of Revenue, Ministry of Finance
North Block, New Delhi.
- 2 The Commissioner of Logistics
Directorate of Logistics
4th Floor, Lok Nayak Bhavan
Khan Market, New Delhi.
- 3 The Commissioner of Customs & Central Excise
Headquarters, Central Revenue Building
IS Press Road, Cochin-682 018
- 4 The Commissioner of Customs & Central Excise
Customs Preventive Commissionerate
Kerala Zone, IS Press Road,
Cochin-682 108

..Respondents.

By Advocate Mr.P. Parameswaran Nair

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is aggrieved by Annexure A-1 order of regularisation granted to him fixing the date of his promotion w.e.f. 5.5.1995 though his junior had been regularised w.e.f. 26.8.1985.

2 The background leading to the issue of the impugned order has been explained by the applicant thus:-

The Government of India acquired 20 Norwegian Speed Boats in the year 1974 for effective prevention of sea smuggling and Naval personnel with proved ability and experience were appointed in the Customs Marine Department and four out of these twenty vessels were allotted to the Cochin Collectorate. Each craft has a sanctioned strength of ten crew members including one Engineer and one Engineer mate and others are called technical persons. The applicant who was an ex-serviceman from the Navy joined the service of the respondents on 23.12.1974 as an Engineer mate after proper selection by the duly constituted Committee. The Department set up four Marine Workshops one of them being at Beypore, Calicut for maintenance of the Patrol Crafts. The applicant being the seniormost Engineer mate, after service of two years was posted as Artisan at the Customs Marine Work shop at Beypore in 1976. In 1984, the Workshop was shifted to Chaliyam. The post of Engineer in Custom Patrol Crafts and the Artisan in the Workshop are in the same category and in the same scale of pay. The post of Engineer was vacant in the workshop Chaliyam ever since 1984. One sanctioned post of Workshop Mate and three posts of Engineer in the Workshop was existing at that point of time and out of this the post of Workshop Mate and two posts of Workshop Engineer were vacant since

1984. The applicant being the seniormost Artisan was doing the duty of Engineer in the Workshop. As per the draft Recruitment Rules, Artisan and Engineer Mate with seven years of service were eligible for appointment to the post of Workshop Engineer. The applicant having joined service in 1974 was due for promotion in 1981 after completion of the requisite number of years and in 1985 since there was vacancy the applicant submitted an application through proper channel for promotion (Annexure A-4). Since no favourable action was taken by the respondents he approached this Tribunal through O.A. 1457/92 which was disposed of with direction to finalise the Recruitment Rules and consider the applicant for promotion in the meantime, if there is a vacancy. Since no action was taken by the respondents, the applicant had been submitting representations for restoring his seniority over his juniors and to grant him promotions, but there was no response from the respondents.

3 In the meantime, various others in the Organisation aggrieved by the same inaction on the part of the respondents had approached various Benches of the Tribunal. One Shri Eknath M.Kolekar approached the Bombay Bench which allowed the Applications consequent to which Annexure A-6 and A-7 orders promoting Shri L.R. Verma and M.C. Sharma, Engineer Mates and Shri Desraj, Artisan were issued by the respondents. The Bangalore Collectorate also promoted Shri G. Viswanathan and K.V. Philip Engineer Mates to the grade of Engineer w.e.f. 4.6.1993. All the above persons had joined the department much after the applicant. It can be seen from the All India seniority list of Marine Staff published on 13.11.1987 that the applicant was the seniormost Artisan in India. But in 1989, the men and materials of this Unit were transferred to the respective Collectorate and the Recruitment

Rules of C & D staff were issued in the year 1994, but draft Recruitment Rules were only in operation for Group A & B staff. Ultimately the applicant was promoted by Annexure A-8 order dated 1.5.1995 on adhoc basis.

4 The All India seniority list of Engineer Skipper Group-B and Engineer Mate Skipper Mate and Artisan was circulated by Annexure A-13 dated 3.9.2004. This list shows that one Shri M.C. Sharma who joined the Department only in 1976 has been given seniority over the applicant and hence he has now been constrained to approach this Tribunal as his earlier representations for readjusting his seniority over the juniors had not been considered by the respondents. The respondents are discriminating between him and his juniors who have been granted retrospective promotion w.e.f. 1.1.1985 and similar earlier dates further pushing down the applicant both in seniority and promotion.

5 The applicant has sought the following specific reliefs:

(i) To call for the records relating to Annexure A-1 to A11 and quash Annexure A-1 to the extent it regularises the services of the applicant only with effect from 1995,

(ii) To declare that the applicant is also fully entitled for consideration for promotion to the post of Engineer with effect from 1.1.1985 as has been granted to his juniors as per Annexure A-9

ii(a)To call for the records relating to Annexure A-13 and to quash it to the extent it places the applicant at Sl.No. 3 only.

(iii) To direct the respondents to reckon the seniority of the applicant with effect from 1.1.1985 as has been granted to his juniors with all benefits and to refix his seniority and pay accordingly and to pay the arrears immediately.

(iv) To issue such other appropriate orders or directions this Hon'ble Tribunal /Court may deem fit just and proper in the circumstances of the case

(v) To grant the costs of this Original Application.

6 Per contra, the respondents have denied that the applicant had not been given promotion to the post of Engineer even though vacancies were available. Though they admit that the posts of Engineer and Artisan are in the same category and same scale of pay but have denied that the applicant has been doing the duties of Engineer in the Workshop. The respondents have admitted that the applicant has been working as an Artisan in the Customs Marine department at Beypore from 16.2.1976 but deny that the applicant had been at any stage prior to 1995 either directed or entrusted to lookafter the duties of the post of Engineer. There is no evidence on record to support this claim of the applicant.

7 In the year 1989, the cadre control was transferred to the Commissionerates. Thereafter the Commissionerates held DPCs for promotion to the post of Engineer on the basis of draft Recruitment Rules and the eligible staff were promoted to the post in the year 1993-95 and applicant was also promoted as per order dated 1.5.1995 w.e.f. 5.5.1995. As regards the applicant in O.A. 324/1992 before the Bombay Bench, the respondents have submitted that the applicant in that OA was looking after the duties of Skipper in addition to the duties of Skipper Mate though no formal orders were issued. However, in the case of the applicant herein, he was neither directed or entrusted with the duties of the post of Engineer. As far as the seniority is concerned, the respondents have relied on the All India Seniority List circulated by letter dated 3.9.2004 which shows Shri M.C. Sharma was the seniormost and not the applicant who was at Sl.NO. 3.

8 The applicant filed a detailed rejoinder submitting that up to 1987 the applicant was the senior most in the seniority list published by the Department. After 1989 when the staff was transferred to the respective

Commissionerate Shri M.C. Sharma and L.R.Verma got their promotion dates revised as the basis of promotion granted to Shri Kolekar by the Bombay Bench and on coming to know that, the applicant has been representing for restoration of his seniority from 1985 onwards. Shri M.C. Sharma got his promotion originally on 23.4.1993 which has been antedated w.e.f. 26.8.1985. The applicant has reiterated that out of the 40 sanctioned strength of Group-A and B Technical officers of the department, the present strength is only 9 Engineers and the Department was still functioning for the last 33 years with this reduced strength which shows that the Department was getting all the work done through the available staff. The Department has promoted only 10 Engineers during the years 1993-95. In April, 1998 he was transferred to the Customs Marine Workshop at Chaliyam to take over the charge of the workshop in the place of the Engineer who retired on superannuation and till the date of superannuation of the applicant he was in charge without any order to officiate in the post. The applicant submitted that it was the practice in the Department that no written orders were being issued for officiating in the higher post. The Department was getting the work done by oral orders as nobody will refuse these orders because disciplinary action can be taken against them. The department has taken 30 years to finalise the Recruitment Rules that too after the staff approached the High Court of Kerala and the Tribunal. He has also pointed out the case of one Shri KAM Kutty Skipper Mate of Commissionerate of Cochin who approached this Tribunal in O.A. 682/89 and got revised orders of promotion w.e.f. 1.1.1985 after retirement. Many others in Bombay and Poona Commissionerates approached the Tribunal and got promotion like Sri KAM Kutty. The applicant and Sri KAM Kutty joined the Cochin

Commissionerate on the same date on 23.12.1974. In the circumstances the applicant is eligible and fully entitled to get the revised promotion over his junior w.e.f. 1.1.1985, the date of promotion granted to Shri KAM Kutty.

9 We have heard Learned counsel Shri Shafik for the applicant and Shri V.A. Shaji for ACGSC on behalf of the respondents. The Learned counsel for the applicant relied on the orders issued in O.A. 41/2006 claiming to be a similarly placed person as the applicant therein.

10 We have considered the pleadings on record and the order of this Tribunal in O.A. 41/06 referred to above by the learned counsel for the applicant. It is seen that the applicant in O.A. 41/06 figures also in the very same order in Annexure A-1 Sl.No. 4 and he was granted date of regularisation as 15.5.1995. The applicant herein is at Sl.No. 3 of the same order and had been granted the date of regularisation as 5.5.1995. The only difference is that the applicant in the present case was working as a Workshop Manager at Chaliyam whereas the applicant in O.A. 41/06 was working as Engineer, Custom Patrol Crafts (CPC) under the 5th respondent. Since the reliefs prayed for are for retrospective regularisation from 1985 at that point of time, both the applicants were working under the control of the Custom Marine Department under one umbrella. It was only in 1989 that decentralisation took place and they were transferred to respective Collectorates to avoid dual control. As such, the fact that they were working on different posts at the time of filing the Application, is not much relevant particularly when the seniority is determined at All India level.

11 Hence the claim of similarity advanced by the applicant has merit. The applicant had earlier approached this Tribunal in 1992 in O.A.

1457/92 which was disposed of by Annexure A-5 order wherein the respondents were directed to finalise the Recruitment Rules and pending finalisation of the Recruitment Rules if there is a vacancy, to consider him for earlier promotion over juniors:-

"5 Before finalisation of the recruitment/promotion rules, the applicant also cannot get any relief as prayed for in the O.A. Hence we have decided to dispose of the application with appropriate direction so as to enable the applicant to get the promotion without any further delay under the Recruitment Rules. Accordingly, we direct respondents 1 & 2 to issue recruitment/promotion rules after getting proper approval from the Government within a period of six months from the date of receipt of a copy of this judgment. It goes without saying that the applicant's claim for early promotion over his juniors will also be considered from the date of the eligibility as per the existing orders or rules pending finalisation of the rules if there is vacancy and the applicant is otherwise qualified for the same."

12 Consequently, the respondents promoted the applicant on adhoc basis by Annexure A-8 order dated 1.5.1995. From this order however, it is seen that the respondents have not considered the direction of this Tribunal to examine the applicant's claim for promotion over his juniors from the date of eligibility and his subsequent representations were also not responded to. If that had been considered, the present anomaly would not have arisen. The respondents have published the All India seniority list as on 1.4.2004 (Annexure A-13) in which the applicant figures at Sl. No. 3, whereas those who have joined later like Shri M.C. Sharma have been placed above him. Shri M.C. Sharma who is now shown as No. 1 in the seniority list has been given the date of promotion as 26.8.85 by virtue of an order passed by the respondents on the representation made by him after considering his case on the lines of the benefit given to Shri S.P Singh and B.D. Shukla who had approached the Mumbai Bench

of the Tribunal. From Annexure A-6 order promoting Shri M.C. Sharma, it is clear that he was granted initially adhoc promotion only w.e.f. 23.6.93. It is not known how his promotion was given retrospective effect from 26.8.85 as now shown in the seniority list without giving notice to the seniors and others who must have been affected by this revision of seniority. In fact, in the 1987 seniority list and the present one the respondents' silence in the reply statement is conspicuous. Every other person whose name has been mentioned by the applicant appears to have been granted retrospective promotion upsetting the seniority in the All India level without giving due notice and following the prescribed procedure. It is evident that the respondents have been haphazardly revising the seniority sometimes on court orders and sometimes on their own, thus driving each and every employee to the Court for redressal. Now that the courts have consistently rejected their plea regarding the non-filling of vacancies, the respondents should give serious consideration to view the entire matter afresh, determine the actual vacancies year-wise and consider the eligible employees for promotion in accordance with the recruitment rules on retrospective basis and arrive at a final settlement.

13 The respondents' contention that the applicant had never officiated in the post of Engineer nor had been entrusted with the duties of the post of Engineer, is too far fetched and unbelievable when viewed in the background of the case and also the factual situation which has come to light in the earlier O.A. 41/06. It is unbelievable that the respondents could have run the Department and the Custom Patrol Crafts keeping all the higher posts vacant unless those who were available had been discharging these duties also. These averments of the applicants as

well as the rebuttal by the respondents have been gone into in detail by us in O.A. 41/2006 and we have rejected this contention of the respondents. In this Application too the respondents have not come out with any submission as to how the dual duties were performed keeping the post vacant and if so how the adhoc promotions could be granted in 1995 without raising this question at all.

14 The respondents have not furnished any reasons for not considering the applicant for promotion especially when he was the seniormost in the seniority list and several retrospective promotions were granted to his juniors as per details furnished by the applicant in the O.A. They have not denied that Shri KAM Kutty whose case was allowed by this Tribunal and who was also appointed along with the applicant herein had joined the Department on the same date. In the light of the order regarding Shri KAM Kutty only retrospective promotions were granted to Shri L.R. Verma, M.C. Sharma, Sri Kolekar etc. while not granting the same benefit to the applicant, all of them have scored a march over the applicant in seniority. We also notice that many employees like the applicant in O.A. 41/06 Shri K.S. Emmanukunju who according to our order now is deemed to have been promoted w.e.f. 1.1.1985 also joined the Department like the applicant herein in 1974 and had not been promoted despite post being available. In the All India seniority list he is shown as junior to the applicant though he has joined earlier to the applicant in the Department on 5.11.1974 whereas the applicant joined the department on 23.12.1974. Now that O.A. 41/06 has been allowed in favour of the applicant's junior w.e.f. 1.1.1985, the case of the applicant has become stronger.

15 In the light of the facts and circumstances stated above, we consider that the action of the respondents in not considering the applicant for promotion to the post of Engineer is highly arbitrary and that the applicant's prayer for consideration for promotion with retrospective effect from 1.1.1985 as has been granted to several of his juniors deserves to be allowed. Accordingly, we allow this O.A. and declare that the applicant is entitled to be promoted to the post of Engineer, w.e.f. 1.1.1985 and his seniority shall also be reckoned w.e.f. that date. Annexure A-13 seniority list shall be revised accordingly taking this as deemed date of promotion. He shall also be entitled to all consequential benefits including pay and allowances attached to the said post from the same date and arrears on account of re-fixation of pay. These directions shall be complied with within a period of three months from the date of receipt of this order. No costs.

Dated 5th December, 2007



DR. KBS RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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