

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA No.172/2000

Friday this the 5th day of April, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER  
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

C.M.Dasan  
S/o Madhavan  
working as Skipper Mate  
C.P.C.Chand Bibi,Customs House  
W. Island, Cochin.

...Applicant

(By advocate Mr.Babu Karukapadath)

Versus

1. Union of India represented by  
Secretary to Government  
Ministry of Finance  
Parliament House  
New Delhi.
2. Commissioner of Preventive Operation  
Customs & Central Excise  
Lok Naik Bhavan, Khan Market  
New Delhi.
3. Commissioner of Customs  
Customs House, Cochin.

...Respondents.

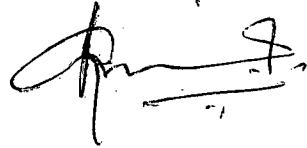
(By advocate Mr.T.A.Unnikrishnan, ACGSC)

The application having been heard on 5th April, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant was initially appointed as Sarank on 26.10.77 in the Customs Preventive Marine Wing in Cochin Customs under the 3rd respondent. He was promoted as Tindal on 6.8.91 and he was working as such in the Customs Patrol Launch Ponnani II till November 1996. According to the applicant, he was the senior most Tindal among the Marine staff under the 3rd respondent, in support of which he produced A-2 seniority list dated 1.1.96. He was awarded with A-3 certificate in appreciation by the President of India of the meritorious service rendered to the department.



He passed the examination conducted by the Mercantile Marine Department which made him eligible for issue of certificate of competency as Master of Steam Vessel and Motor Vessel dated 3rd April 1995 (A-4). In 1993 the Ministry of Finance sanctioned 120 posts in different grades for 12 CPCs (Customs Patrol Crafts) in the Customs department. Each C.P.C. required 1 skipper and 1 skipper mate and other staff for operating the vessel. One such C.P.C, CPC Chand Bibi was allotted to Customs House, Cochin for more effective prevention of smuggling in Cochin. Applicant claimed that as per A-1 Recruitment Rules he was fully qualified, eligible and competent to be appointed as Skipper mate on completion of 5 years of service as Tindal and accordingly he became eligible and qualified for promotion as Skipper Mate on 5.8.96. However in spite of his repeated requests, the respondents did not constitute the DPC for the propose of promoting the applicant as Skipper Mate. Applicant claimed that he was directed to take charge of C.P.C.Chang Bibi from 7.11.96 onwards and as such he took charge as Skipper Mate in the said vessel. He claimed that he had been performing and discharging all the duties and functions of a Skipper Mate/Skipper in the said CPC continuously and uninterruptedly since 7.1.96. As the respondents had been refusing even to constitute the DPC for giving regular promotion to the applicant and as he was not being paid the pay and allowances eligible to the Skipper Mate though he was officiating as a Skipper Mate, the applicant has filed this OA. A-7 is the copy of a representation dated 17.8.98 submitted by the applicant. Alleging that the inaction on the part of the respondents to promote him as Skipper Mate was highly

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arbitrary and illegal and the refusal of the respondents to pay salary and allowances admissible to the Skipper Mate in spite of he doing the job as that of a Skipper Mate during the period from 7.11.96, the applicant sought the reliefs mentioned below.

- a) Declare that the applicant was entitled to be promoted as Skipper Mate under the 3rd respondent with effect from 7.11.96.
- b) Direct the respondents to promote the applicant as Skipper Mate with effect from 7.11.96 and give him salary and other benefits attached to the post of Skipper Mate.
- c) Direct the respondents to pay to the applicant the salary and other benefits admissible to the post of Skipper Mate for the entire period during which he was doing the work of Skipper Mate in the department.

2. Respondents filed reply statement. They have admitted the factual aspects narrated by the applicant. According to them, even though the claim of the applicant that he was the senior most Tindal was correct, whether he was competent for promotion or not was to be decided by the Departmental Promotion Committee (DPC). Promotion to the post of Skipper Mate was on seniority cum selection basis. The Department was not in a position to give him promotion as there was no sanctioned post of Skipper Mate in the Customs House, Cochin. It was submitted by them that there was no sanction of crews allotted to Chand Bibi. For the time being the vessel was being manned by the existing crews. All launch crews including the applicant were being posted in both the vessels CPL.II (Customs patrol Launch) and CPC Chand Bibi simultaneously and the applicant was drawing special pay for working in the Customs Patrol Launch (CPL) II Ponnani. It was submitted a CPL was being controlled by Tindal and CPC was to be handled by Skipper or Skipper Mate. While a CPL required 8 crew

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members and CPC required 10 crew members, the working strength of Marine Personnel was 33 in different grades. It was also submitted by them that even though one CPC was allotted to Cochin Customs and the concerned Commissioner was the cadre controlling authority for marine staff posted under his charge, crew sanction as indicated above which were required for operating the said vessel had not been accorded by the Ministry so far. Since the sanction of the required staff for operating the vessel CPC was not received in the Customs House, as an alternative the department directed the existing Launch Staff to operate the vessel for the time being. Another Tindal C.P. Balakrishnan was also working in CPC Chand Bibi. C.M. Dasan - the applicant - was drawing the special pay for working in the CPL Ponnani II. The post of Skipper Mate did not exist in the Customs House. When such a post did not exist, the department was not in a position to give promotion to the applicant. The department had neither asked him to officiate as Skipper Mate nor issued any orders to that effect. Therefore the OA was liable to be dismissed.

3. Heard the learned counsel for the parties.

4. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record.

5. What we notice from the pleadings is that the respondents, in the reply statement which has been filed by the Assistant Commissioner of Customs House, Cochin on behalf of all the respondents as authorized by them admit that as per A-5 letter

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dated 2.8.93, 120 posts for 12 CPCs were sanctioned but the first respondent had not communicated the sanction. Indirectly what they state is that the second respondent on whose behalf also the reply statement is filed had not acted on para 4 of A-5 letter. We pointed out this to the learned counsel for the respondents when the OA was heard on 4.4.02. He sought time to get instructions and to make a statement. Today when the OA was taken up he submitted the he did not receive any instructions in spite of seeking the same from the respondents.

6. In the light of the above, the only conclusion that we can draw is that the respondents' statement that the posts were not sanctioned is not a factual statement at all. A-5 indicates clearly that the Ministry had sanctioned 120 posts. When the Ministry sanctioned 120 posts and it is also admitted by the respondents that the applicant was put in charge of the CPC when it was allotted to Cochin Customs House from November 1996, denial of remuneration appropriate to the post does not appear to be legal or valid. From the reply statement, it is seen that not only the applicant but also one Balakrishnan, another Tindal had also been asked to work in CPC Chand Bibi. Keeping the above aspects in view, we direct the respondents to pay to the applicant and to Balakrishnan or any other person who has worked as Skipper/Skipper Mate the arrears of difference in salary and other monetary benefits admissible to the post after verifying the factual position about their periods of working.

7. As the posts of Skipper/Skipper Mate were sanctioned by the Ministry, the respondents cannot have any reason not to constitute DPC for considering the applicant and others eligible for the post of Skipper/Skipper Mate.

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8. Respondents are directed to carry out the above two directions within a period three months from the date of receipt of a copy of this order.

9. OA stands disposed of with the above directions. No order as to costs.

Dated 5th April, 2002.



K.V. SACHIDANANDAN  
JUDICIAL MEMBER



G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER

aa.

APPENDIX

Applicant's Annexures:

1. A-1 : True copy of the recruitment Rule dated 31.12.94 issued under Article 309 of the Constitution of India.
2. A-2 : True copy of the seniority list dated 1.1.96 issued from the office of the 3rd respondent.
3. A-3 : True copy of the certificate of appreciation issued by the President of India to the applicant dt. Nil.
4. A-4 : True copy of the certificate of competency as a Master of Steam Vessel and a Motor Vessel dated 3.4.95.
5. A-5 : True copy of the order No.F A-11013/85/90-Ad, TV dated 2.8.93 issued by the Ministry of Finance.
6. A-6 : True copy of the letter No.203/11/DPO (AS) 94/3471 dated 1.10.96 of the Marine Officer.
7. A-7 : True copy of the representation dated 17.8.98 submitted by the applicant to the 3rd respondent.

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17.4.02