

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 177/90
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DATE OF DECISION 30-7-1990

JV Kamalasanan & 9 others Applicant (s)

M/s Babu Thomas & Marykutty Babu Advocate for the Applicant (s)

Versus

NM Nainan & 3 others Respondent (s)

Mr K Prabhakaran, ACGSC (for R' 2, 3 & 4)

Mr R Rajasekharan Pillai (for R 1) Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member.

The Hon'ble Mr. N Dharmadan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement? ✗
4. To be circulated to all Benches of the Tribunal? ✗

JUDGEMENT

Shri N V Krishnan, Administrative Member.

This application has been filed on 28.2.90 by 10 applicants of whom 6 are Havildars, Central Excise and the rest are Havildars Preventive under the Collector of Central Excise and Customs, Cochin. The reliefs sought by them are (i) to interdict the Union of India, the Central Board of Excise & Customs and the Collector of Central Excise & Customs, Cochin (Respondents 2, 3 & 4 respectively) from proceeding any further under the pretext of integration of different cadres of Havildars in the Central Excise and Customs Department and (ii) to direct them not to

disturb the seniority assigned to the applicants in the category of Havildars Central Excise and Havildars Preventive in Annexures 9 and 10.

2 Prior to this application, these applicants had filed an application (RA 29/90) on 19.2.90 seeking a review of our order dated 18.1.90 in OAK 408/88.

That DA was filed by the 1st Respondent in the review application and the review applicants were not parties therein. The RA was disposed of by this Bench on 13.3.90 with the following directions:

" If the applicants feel that their interests are adversely affected, it is open to them to file an original application explaining their grievance and therein seek a fresh decision on the basis of fresh grounds which, according to the applicants, were not considered in OAK 408/88. In the circumstance we see no force in the RA and it is accordingly dismissed".

3 Despite the above directions, the applicants have not cared to amend the instant original application. Instead, they have merely submitted in para-3 of their rejoinder to the reply affidavit of respondents 2 to 4, that the review application referred to above may also be treated understood and read as part of this application. We are unable to oblige the applicants in this regard as it was their duty to have properly amended the original application after the dismissal of the review application 29/90 with the direction as reproduced above. In the circumstances, it would have been easy for us to have disposed of this application by merely stating that the impugned steps stated to be taken by the respondents 2 to 4 for integrating different cadres of

Havildars in the Central Excise and Customs

Department and preparing a combined seniority list

are entirely in pursuance of our judgment in OAK408/88

and that, therefore, this application has no force

at all. However, we refrain ourselves from dismissing

the application. Instead, we proceed to dispose of this

application on merits even though it does not refer to

our decision in OAK 408/88 because of the arguments

addressed by the learned counsel for the applicants.

4 The main contention of the applicants is that the Recruitment Rules for the post of Havildars Central Excise, Havildar Preventive, and Havildar Records were not produced in OAK 408/88 and hence a fully considered order was not pronounced. It is submitted that the recruitment rule relating to Havildar Records is entirely different from the corresponding rule for the other two categories. Therefore, there has to be 3 seniority lists of Havildars. It is on this plea that it is contended that our earlier decision has been rendered without considering the relevant recruitment rules.

5 We have considered this argument. The extracts of the relevant schedule of the Recruitment Rules have alone been exhibited by the applicants at Annexure A1. We are concerned with the posts of Daftry Ordinary Grade at Sl.No.3 (now designated as Havildar, Records), Sl No.4 Jamadar (now designated as Havildar, Central Excise) and Sl.No.5 Jamadar Preventive (now designated

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as Havildar, Preventive). A perusal of the entries against these posts shows that the aforesaid argument of the learned counsel of the applicant is not entirely correct. There is absolutely no distinction between the provisions relating to recruitment of Havildar Records and Havildar Central Excise. All entries relating to recruitment (Columns 4 to 14) are identical. Both these posts are to be filled up by promotion of Sepoys who have rendered 3 years service in that grade and a DPC with identical composition exists to consider promotion. As far as Havildar Preventive is concerned the procedure for recruitment is the same except for three details. Firstly, this is a selection post. Secondly, only those Sepoys with 3 years service will be considered for promotion who have an additional qualification of proficiency in handling fire arms. This is the basis of selection. Thirdly, appointments can be made by direct recruitment also. The candidates for direct recruitment^{alone} are required to pass middle standard examination and possess the prescribed physical standard and pass the prescribed test.

~~xxxxxxx~~ It is also stated that if the post cannot be filled up by promotion, ~~they can be filled up by promotion~~ it can be filled up by direct recruitment.

6. ~~Conclusion~~. Therefore, as the procedure for recruitment of Havildars Recoords and Havildars

Central Excise is absolutely identical, on the premise of the learned counsel for the applicant himself there is nothing ^{u/s} prevent a combined seniority list being prepared for them.

7 In so far as the Havildar Preventive is concerned, the only material difference is the requirement relating to having proficiency in fire arms. This is not a substantial difference for, Havildar Excise, and Havildar Records can both acquire proficiency in handling fire arms even though they may not have acquired such proficiency when they were Sepoys. We have mentioned in para-9 of the judgment in OA 408/88 that unless necessary training is given to the Sepoys in the use of fire arms, they cannot acquire proficiency for appointment as Havildars Preventive and that therefore, the Havildar Records who do not have such proficiency can still acquire such proficiency and become eligible to be posted as Havildars Preventive. This holds good for Havildar Excise also who, as seen from the Annexure A1 extract from the schedule to the Recruitment Rules, does not have this proficiency. In this view of this matter we do not find any objection in having a combined seniority list of all the three categories of Havildars.

8 The applicants who were careful to produce Annexure A1 extract from the Recruitment Rules have

not produced any rule which directs that there should be a separate seniority list for each category of Havildars and ^{that} ~~they~~ cannot be combined together.

They have, however, exhibited Annexure A9 and A10 which shows that ~~xxxx~~ separate seniority list for Havildar Records, Havildar Preventive and Havildar Excise has been prepared. However, in the absence of any rule to the contrary, that does not mean that the Union of India namely, Respondent-2 cannot direct that an integrated seniority list should be prepared.

9 In OA 408/88 we were called upon to interpret the letter dated 12.12.83 from the Union Finance Secretary to all the Collectors of Central Excise and Customs which has been re-produced in para 2.1 of that judgment. For this purpose, the Respondent-2 had given a summary of the provisions of the relevant recruitment rules in the reply affidavit which is a true summary of the provisions of Annexure A1 produced in the present application. Hence, it is baseless to allege that the relevant rules were not considered in OA 408/88. We found that merely by changing the designation of the post from Daftry Ordinary Grade to Havildar (Records), the difficulty in filling up of the post of Daftry referred to in the letter dated 12.12.83 cannot be solved. We felt that the integration of the three groups of Havildars was also contemplated in that letter though it was not specifically stated though it was referred to therein.

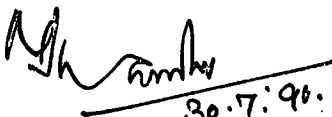
10 The learned counsel for the applicants relies heavily on the ruling of the Supreme Court in Mallikarjuna Rao Vs. State of Andhra Pradesh -1990(2) Supreme Court Cases-707 wherein it has been held that the Tribunal should not direct the executive to resort to legislation afresh. The counsel is entirely wrong in this respect for, as stated our directions flow only from the letter dated 12.12.83 of Respondent-1.

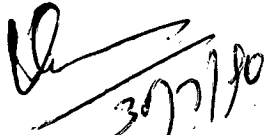
11 That apart, if that had been the case, the persons most aggrieved would have been respondents 2 to 4. They have no such grievance. On the contrary, they have come to the same conclusion, perhaps, independently, and now issued instructions on 29.2.90 (i.e. a few days after we delivered our judgment on 18.1.90 in OAK 408/88) that the categories of Havildars Records and Havildars General/ Preventive will be integrated into one single cadre in the Central Excise Collectorate. It is stated therein that the question of such merger in so far as the Customs Department was concerned would be considered separately after taking into account the demand of the concerned Group-D officers Federation and reviewing the working arrangement in the Central Excise Department.

12 The learned counsel for the applicant has cited certain other rulings namely, 1990(2) SC Cases-378 - PK Unni Vs Nirmala, 1990(2) SC Cases-647- Vinay Kumar Varma Vs State of Bihar and others 1990(2) SC Cases-653- Som Raj Vs. State of Haryana. We have perused these judgments and find that they are not relevant for the disposal of this case.

13 For the reasons mentioned above, we find no substance, whatsoever, in this application and it is accordingly dismissed.

14 There will be no order as to costs.


30.7.90.
(N Dharmadan)
Judicial Member


30/7/90
(NV Krishnan)
Administrative Member

30-7-1990