

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ORIGINAL APPLICATION NO:183/2005
DATED THE 30TH DAY OF OCTOBER,2006**

CORAM:

**HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN
HON'BLE SHRI GEORGE PARACKEN, MEMBER(J)**

1. Cochin Customs Preventive Service Group D Officers' Association Custom House, Cochin-682 009.
2. O.R. Mohanlal Hawildar, Customs House, Cochin – 682 009 ... Applicant

By Advocate Mr.P.George Williams

V/s.

1. Commissioner of Customs, Custom House, Cochin – 682 009
2. Asst. Commissioner of Customs, Custom House, Cochin – 682 009
3. Union of India, Represented by the Secretary, Department of Revenue, North Block, New Delhi-110 001. ... Respondents

Mr.TPM I Khan SCGSC represented by Mr.Rajeev

This OA having been heard on 30th October, 2006, the Tribunal on the same day delivered the following:-

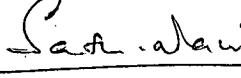
(ORDER)

Hon'ble Smt. Sathi Nair, Vice Chairman

Even on second call the counsel for applicant is not present. It is seen that the applicant is not interested in pursuing his case and hence the OA is dismissed for non prosecution.


GEORGE PARACKEN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.183/2005

Thursday this the 31st day of May, 2007

CORAM

**HON'BLE MR. A.K. AGARWAL, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

1 The Secretary,
Cochin Customs Preventive Service Group D
Officers Association, Customs House,
Cochin-682009.

2 O.E.Mohanlal,
Havildar,
Customs House,
Cochin-682009.Applicants

(By Advocate Mr.P.George William)

V.

1 Commissioner of Customs,
Customs House,Cochin-682009.

2 Asst.Commissioner of Customs,
Customs House,
Cochin-682009.

3 Union of India, represented by the
Secretary, Department of Revenue,
North Block,
New Delhi-110 001.Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

This application having been heard finally on 31.5.2007, the Tribunal on the same day delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

This OA has been filed by the Cochin Customs Preventive Service (Group 'D') Officers Association (Applicant No.1) and a member of the said Association Shri O.R.Mohanlal (Applicant No.2). The applicants allege discrimination in fixation of their pay vis-a-vis their

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juniors. They sought to rectify the anomaly said to have been caused on account of wrong fixation of their pay and to step up the same at par with their juniors.

2 The brief facts of the case are that the second respondent invited applications through the Employment Exchange in the year 2003 for the post of Sepoy in the scale of Rs. 2610-60-2910-65-3300-70-4000 vide Annexure.A2 notification. Later the second respondent vide Annexure.A1 Establishment Circular No.25/2004 dated 17.6.2004, published the seniority list of Group 'D' staff of the Customs House as on 1.4.2004. In the list of Havildars, there are 28 persons and the second applicant is at Sl.No.4 of the said list. Under the head of Sepoys, there are 44 persons. All the Class IV employees except Safaiwalas and Gardeners belong to the cadre of Sepoy. They have stated that the persons starting with Sl.Nos.24 to 44 among the Sepoys are direct recruits and in the seniority list they have been rightly placed below the senior Sepoys at Sl.No.1 to 23. However, they alleged that some of the newly recruited junior Sepoys are drawing the higher pay than the senior Sepoys and the senior Havildars.

3 The respondents in their reply have stated that some of the Canteen employees/Safaiwalas who were already working with Customs House, Cochin in the scale of Rs. 2550-55-2660-60-3200 have also been appointed as Sepoys in terms of the Annexure.A2 notification on being sponsored by the Employment Exchange. The persons at Sl.No. 24 to 42 of the Annexure.A1 seniority list are such direct recruit Sepoys. Their basic pay, on appointment as Sepoys have been fixed under the provisions of FR 22(I)(a)(2) read with FR 22(I)(a) (3) which permits a government servant who is appointed to a lower post on his own request to have his pay fixed at the same stage held

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by him in the higher scale or at the next stage, if there is no equal stage in higher pay scale. Thus those Sepoys who were previously working either as Canteen employees or Safaiwalas are drawing more pay than their seniors in the merit list by virtue of their past service, and there is no anomaly in fixation of their pay.

4 We have heard Advocate Mr.P.George William for the applicants and Advocate Shri TPM Ibrahim Khan, SCGSC for the respondents. The admitted fact is that the persons at Sl.No.24 to 44 were already working with the respondent department as Canteen employees/Safaiwala etc. in the scale of pay Rs. 2550-55-2660-60-3200. They have been drawing increments in the said scale from time to time. When the applications for the post of Sepoys were invited by the Annexure.A2 notification, they have also applied and got selected along with the Applicant No.2. The scale of pay of Sepoy is Rs. 2610-60-2910-65-3300-70-4000. Obviously, when the persons at Sl.Nos 24 to 44 in the seniority list have been appointed as Sepoys they have been drawing basic pay in the scale of Rs. 2550-55-2660-60-3200 which was higher than minimum of the scale of Rs. 2610-60-3920-65-3300-70-4000. Being fresh recruits, the applicant No.2 and similarly placed persons were entitled to draw only Rs. 2610/- as their initial basic pay.

5 The Apex court in the case of Inderpal Yadav Vs. Union of India (2005) 11 SCC 301 held as under:

“6 However, while the petitioners cannot be granted the reliefs as prayed for in the writ petition, namely, that they should not be reverted to a lower post or that they should be treated as having been promoted by reason of their promotion in the projects, nevertheless, we wish to protect the petitioners against some of the anomalies which may arise, if the petitioners are directed to join their parent cadre or other project, in future. It cannot be lost sight of that the petitioners have passed trade tests to achieve the

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promotional level in a particular project. Therefore, if the petitioners are posted back to the same project they shall be entitled to the same pay as their contemporaries unless the posts held by such contemporary employees at the time of such reposting of the petitioners is based on selection.

7 *Additionally, while it is open to the Railway Administration to utilize the services of the petitioners in the open line, they must, for the purpose of determining efficiency and fitment take into account the trade tests which may have been passed by the petitioners as well as the length of service rendered by the petitioners in the several projects subsequent to their regular appointment."*

Reiterating the aforesaid judgment in Inderpal Yadav's case, the Apex Court has also allowed the appeals in Bhadei Rai Vs. Union of India and others, 2006 SCC (L&S) 89 and in Badri Prasad and others Vs. Union of India and others, 2006 SCC (L&S) 92 and held that the appellants are entitled for the protection of the pay last drawn by them in Group 'C' post even after their repatriation to the Group 'D' post.

6 Since the applicants are late entrants in the service of the respondents in the scale of Rs. 2610-60-2910-65-3300-70-4000 and the Sepoys at Sl.No.24 to 44 have already been working at a lower scale of Rs. 2550-55-2660-60-3200 and drawing basic pay more than the minimum of the higher scale, obviously their last pay drawn has to be protected and their pay has to be fixed accordingly. Hence here is no anomaly in the matter, as alleged by the applicants.

7 In the above facts and circumstances of the case, we consider that the OA is devoid of any merit and the same is dismissed. There is no order as to costs.

Dated this the 31st day of May, 2007


GEORGE PARACKEN
JUDICIAL MEMBER
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A.K. AGARWAL
VICE CHAIRMAN