

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.258/96

Thursday, this the 28th day of May, 1998.

CORAM

HON'BLE MR P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

1. K. Subramaniam,
Launch Mechanic,
Sea Patrolling Unit,
Baypore, Calicut - 15.
2. K.V. Joshi,
Engine Driver,
Sea Patrolling Unit,
Baypore, Calicut - 15.

..Applicants

By Advocate Mr K. Divakaran Nair (Not present)

Vs.

1. Union of India, represented
by the Secretary to Government,
Ministry of Finance,
New Delhi.
2. The Director,
Directorate of Preventive Operations
(Customs and Central Excise),
New Delhi.
3. The Collector of Customs,
and Central Excise,
Ernakulam.

..Respondents

By Advocate Mr MHJ David J, Addl.CGSC.

O R D E R

P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

When the application was called yesterday, neither the applicants nor their counsel were present. Therefore, it was posted for disposal to-day.

2. When the application came up for consideration to-day, we find that again neither the applicants nor the counsel are

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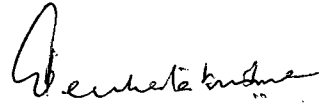
present.

3. The Original Application is accordingly dismissed for default. No costs.

Dated the 28th of May, 1998.

A stylized, handwritten signature in black ink, consisting of a large, sweeping loop followed by a horizontal line.

A.M.SIVADAS
JUDICIAL MEMBER

A handwritten signature in black ink, appearing to read 'Venkatakrishnan' with a flourish at the end.

P.V VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.258/96

Friday, this the 28th day of August, 1998.

CORAM:

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

1. K Subramaniam,
Launch Mechanic,
Sea Patrolling Unit,
Baypore, Calicut-15.

2. KV Joshi,
Engine Driver,
Sea Patrolling Unit,
Baypore, Calicut-15.

- Applicants

By Advocate Mr K Divakaran Nair

Vs

1. Union of India represented
by the Secretary to Government,
Ministry of Defence,
New Delhi.

2. The Director,
Directorate of Preventive
Operations(Customs & Central Excise),
New Delhi.

3. The Collector of Customs,
and Central Excise,
Ernakulam.

- Respondents

By Advocate Mr MHJ David J, ACGSC

The application having been heard on 25.8.98, the
Tribunal on 28.8.98 delivered the following:

O R D E R

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

The applicants submit that they have been appointed as
Driver Class.II/Launch Mechanic in the Customs and Central Excise
Department. They are aggrieved that they have not been promoted
to the post of Engineer Mates lying vacant from 1.5.95 onwards.
The post of Engineer Mates is to be filled up by promotion from

the grade of Engine Driver with minimum of 5 years service in the grade. Applicants submit that they are qualified to be posted as Engineer Mates and that they have put in long years of service as Driver. Applicants made A-11 and A-12 representations regarding their grievance but there has been no response. Applicants have been performing the duties of the post of Engineer Mate and therefore they are entitled to the salary of the Engineer Mate. Applicants approached the Tribunal in O.A.1109/95 and the Tribunal directed consideration of their representations by the respondents. A joint representation A-15 was thereupon submitted and by A-16 order dated 11.1.96 their representation was rejected stating that the applicants were in the pay scale of Rs.1200-1800 which is the post of Launch Mechanic and promotion from this grade is to Engine Driver, that there is no post of Engine Driver in this Commissionerate, and that applicants are not eligible to be promoted to the higher post of Engineer Mate since the rules require 5 years service as Engine Driver which the applicants do not possess. But the third respondent had issued an order A-17 promoting a Launch Mechanic to the post of Engine Driver. Applicants therefore pray that they be declared eligible for promotion as Engineer Mates with retrospective effect from the date on which the vacancy of Engineer Mate arose after quashing A-16 and for a declaration that applicants shall be deemed to have been promoted as Engineer Mates from 1.5.95 which is the date of A-9 orders and for a declaration that they are entitled to the pay attached to the post of Engineer Mate at least from 1.5.95 onwards.

2. Respondents submit that the appointment/promotion etc. of the Marine staff in the Customs and Central Excise is governed by the Marine Organisation of Customs and Central Excise Department(Group C and D posts) Recruitment Rules, 1994(R.1 rules). Before the commencement of R.1 rules, by A-7 orders

dated 12.1.90 the cadre of Engine Driver Second Grade to which post applicants were appointed and the cadres of Launch Mechanic, Inland Driver and Boat Driver were merged to form a rationalised grade of Launch Mechanic in the pay scale of Rs.1200-1800. The sanctioned strength of Engineer Mate under the third respondent is only two and two persons are already working against these vacancies. There is no post of Engine Driver available under the third respondent as seen from R.2 orders dated 18.10.95. According to R.1 rules, Launch Mechanics can be promoted to the post of Engine Driver in the pay scale of Rs.1320-2040 if they have 5 years service in the grade subject to qualifying in the interview for the post of Engine Driver conducted by the Department. The post of Engine Driver is seen to be a selection post. Though applicants have the required qualification to be promoted as Engine Drivers, they cannot be so promoted for want of posts of Engine Drivers. Only Engine Drivers with 5 years experience in the grade are eligible to be further promoted as Engineer Mates and since applicants do not have any service as Engine Drivers, they cannot be promoted as Engineer Mates.

3. We find that the recruitment rules do not permit the applicants who are Launch Mechanics to be promoted as Engineer Mates. They are only eligible to be promoted as Engine Drivers. But for that the respondents do not have posts of Engine Drivers under the third respondent. Unless the recruitment rules are amended or posts of Engine Drivers are sanctioned under the third respondent, the applicants will not be entitled to the relief they seek. Respondents have stated in a separate reply statement filed in regard to M.A.1208/97 that a reference has been made by the Department to the Ministry requesting permission to promote eligible officers on ad hoc basis and to amend the recruitment rules. A recommendation has been made by the Vth Pay Commission regarding the merger of Engine Drivers and Launch Mechanics cadres but it

has not yet been accepted by the Government of India. Under these circumstances, we are unable to grant the relief prayed for by the applicants. The applicants have pointed out A-10 orders by which one of the applicants has been shown as Engine Driver but the respondents have stated that it was only a mistake which has since been corrected by order dated 16.7.90(R.3). The applicants cannot therefore draw any support from A-10. The other order A-17 relied on by the applicants is seen to be issued prior to the R.2 orders according to which no Engine Driver post is sanctioned under the third respondent.

4. In the result the application is dismissed. No costs.

Dated, the 28th August, 1998.



(AM SIVADAS)
JUDICIAL MEMBER



(PV VENKATAKRISHNAN)
ADMINISTRATIVE MEMBER

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