

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.272/07

Thursday this the 12th day of March 2009

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. P.P.Aboobacker,
Boat Driver,
Port Department, Kavarathi.
2. M.P.Yacoob,
Boat Driver,
Port Department, Kavarathi.
3. K.Sayed Ali,
Boat Driver,
Port Department, Kavarathi.
4. K.Jalaludeen,
Boat Driver,
Port Department, Kavarathi.
5. K.Sayedmohammed,
Boat Driver,
Port Department, Kavarathi.
6. P.C.Attakoya,
Boat Driver,
Port Department, Kavarathi.
7. C.O.Sayed,
Boat Driver,
Port Department, Kavarathi.
8. T.I.Hassankoya,
Boat Driver,
Port Department, Kavarathi.

...Applicants

(By Advocate Mr.Thampan Thomas)

Versus

1. Union of India represented by its Secretary,
Transport Department, Transport Bhavan, New Delhi.



2. The Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pensions,
New Delhi.
3. The Administrator,
Lakshadweep Administration,
Union Territory of Lakshadweep,
Kavarathi.
4. Port Officer,
Office of the Port Officer,
Kavarathi, Lakshadweep.
5. Mohammed Kunnumathege,
Deck Crew,
Port Department, Kavarathi.
6. Hassan Baduvalugothi
Boat Driver,
Port Department, Kavarathi.
7. K.C.Jaffer,
Boat Driver,
Port Department, Kavarathi.
8. A.Abdulkareem,
Boat Driver,
Port Department, Kavarathi.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC [R1-2]
By Advocate Mr.S.Radhakrishnan [R3-4])

This application having been heard on 12th March 2009 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

Challenge in this O.A is against (i) the Annexure A-11 Office Order dated 6.9.2006 issued by the 4th respondent by which the applicants have been promoted to the post of Boat Driver on regular basis in the scale of pay of Rs.3050-75-3950-80-4590 only with effect from 30.8.2006 ie from the date the DPC for Group 'C' posts has met and not from the due date

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and (ii) the Annexure A-13 Office Memorandum dated 12.12.2006 issued to the 1st and 2nd applicants in reply to their representation dated 23.10.2006 informing them that in terms of Ministry of Personnel & Administrative Reforms O.M.No.22011/3/76-Estt.(O) dated 24.12.1980 and 20.5.1981, the regular promotion will have only prospective effect even in cases where the vacancy relates to an earlier year.

2. The brief facts of the case are that the applicants entered service on various dates in the years 1981 and 82. The 5th and 6th respondents entered service on 13.11.1998, 7th respondent on 28.11.1998 and 8th respondent on 10.12.1998. The names of respondents No.5 to 8 are also shown at Sl.No.1-4 and the applicants' names are shown at Sl.No.5 to 12 in the impugned Annexure A-11 Office Order dated 6.9.2006. The applicants entered service as Lascars and they were promoted on ad hoc basis as Engine Crew in the year 1990 and 1991. Annexure A-1 order dated 22.11.1990 is the order of ad hoc promotions to the 1st applicant, Shri.P.P.Aboobacker. According to the said order, he has been promoted and posted as Engine Crew on board M.V.Dweep Setu in the existing vacancy. By Annexure A-2 order dated 5.12.1990 the 2nd applicant was also promoted on ad hoc basis as Boat Driver. Similar orders have also been issued in respect of other applicants in this O.A. While they were continuously working in the higher grade for the last five years, the 2nd applicant made the Annexure A-3 representation dated 1.11.1995 requesting the respondents to regularise his service as Deck Crew. According to the learned counsel for the applicants, similar representations

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have been made by others also. However, they were informed vide Annexure A-4 Office Memorandum dated 23.10.1999 that their "request for regularisation of their ad hoc promotion with effect from the date of joining on ad hoc promotion is not possible because as per existing rules and instructions of the Government of India, the appointment/promotions are made from the date of issue of orders or date of sitting of the DPC whichever is later and such orders cannot be issued with retrospective effect." Later on, vide Annexure A-5 letter dated 1.8.2002, the Port Department sought vigilance clearance in respect of the applicants from the Vigilance Officer as they were filling up 8 posts of Drivers which have been vacant and need to be filled up for Departmental purpose. Thereafter, vide Annexure A-6 Office Order dated 23.10.2002, the respondents promoted the applicant as Boat Drivers on ad hoc basis in the pay scale of Rs.3050-75-3950-80-4590 against the existing vacancy. The applicants have produced Annexure A-7 provisional seniority list of Deck/Engine Crew and Greazer up to 3.7.2000, according to which, the respondents No.5 to 8 were shown as seniors to the applicants. The applicants have, therefore, made representations against the aforesaid seniority list vide Annexure A-8 dated 21.2.1997 and Annexure A-9 dated 11.3.1997. However, ignoring those representations, the respondents have issued Annexure A-10 seniority list again showing the respondents No.5 to 8 above the applicants. Thereafter, the respondents have issued the Annexure A-11 impugned Office Order dated 6.9.2006 promoting the applicants as Boat Drivers on regular basis with effect from 30.8.2006 ie with effect from the date of the DPC recommended their names for such



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promotion. The 1st applicant made the Annexure A-12 representation dated 23.10.2006 requesting for regularisation of his service as well as of those 24 other similarly placed candidates from the respective dates of their ad hoc appointments. However, the said request have been rejected by the respondents by impugned Annexure A-13 letter dated 12.12.2006 saying that there is no provision to grant regular promotion from retrospective effect.

3. The applicants have produced a copy of Annexure A-14 order of this Tribunal dated 26.9.2006 in O.A.892/03 by which similar cases was considered by this Tribunal and allowed the OA. The operative part of the said order was as under :-

"13. The OA therefore succeeds. The impugned orders 20.11.2002 (Annexure A-2) are all quashed and set aside. It is declared that all the applicants are entitled to have their promotion to the post of Boat Drivers on regular basis with effect from the date of their ad hoc promotion and not from the date the DPC met and their seniority shall also be accordingly revised. Any other consequences emanating from such retrospective promotion shall also be available to the applicant.

14. As this is the second round of litigation and the failure on the part of the respondents to apply their mind properly in deciding the issue is the cause for the applicants being forced to approach the Tribunal, the applicants are entitled to costs. Respondent No.3 is directed to pay a cost of Rs.2000/- to each of the applicants. This order shall be complied with, within a period of two months from the date of communication of this order."

4. The said order was challenged before the Hon'ble High Court of Kerala in WPC No.12039/07 but it was dismissed after deleting the direction of this Tribunal to pay the costs to the applicants therein.



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5. We have heard Smt.Jancy on behalf of Shri.Thampan Thomas for the applicants, Smt.Jisha on behalf of Shri.TPM Ibrahim Khan,SCGSC for the respondents No.1&2 and Shri.Rajmohan on behalf of Shri.S.Radhakrishnan for the respondents No.3&4. They have agreed that this case is fully covered by the aforesaid Annexure A-14 order of this Tribunal dated 26.9.2006 in O.A.892/03 affirmed by the Hon'ble High Court of Kerala in WPC No.12039/07. Even though notice was issued to the private respondents No.5-8, they have not appeared before this Tribunal or contested this O.A.

6. In view of the above position, we allow this O.A and quash and set aside Annexure A-11 Office Order dated 6.9.2006 to the extent that the applicants' promotions on regular basis as Boat Drivers was only with effect from 30.8.2006 ie the date from which the DPC met and recommended their names. Similarly, Annexure A-13 Office Memorandum dated 12.12.2006 rejecting their representations for retrospective promotions is also quashed and set aside. We declare that the period of service rendered by the applicants on ad hoc basis as Boat Driver/Engine Crew shall be treated as regular service. Consequently the respondents are directed to issue revised promotion order in respect of the applicants as Boat Drivers on regular basis taking into consideration their entire service rendered as Engine Crew/Deck Crew on ad hoc basis. The seniority list of the Engine Crew/Deck Crew and Boat Driver shall also be revised accordingly assigning them position above the respondents No.5 to 8.



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7. The aforesaid directions shall be complied with, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 12th day of March 2009)


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER