

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 273/93

Tuesday, this the 8th day of March, 1994

SHRI N. DHARMADAN (J)
SHRI S.KASIPANDIAN (A)

T. Gopalan, Lascar I,
Command of Yard, Naval Ship
Repair Yard, Naval Base, Kochi-4. .. Applicant

By Advocate Shri P.M. Shaji.

V/s

1. The Union of India, rep. by
Secretary, Min. of Defence,
New Delhi.
2. The Flag Officer Commander-in-Chief,
Head Quarters, Southern Naval
Command, Naval Base, Kochi-4.
3. Shri S.Sukumaran, Tindel of Lascar,
Command of Yard, Naval Ship
Repair Yard, Naval Base, Kochi-4. .. Respondents

By Advocate Shir K.Karthikeya Panicker, ACGSC (R. 1&2)

ORDER

N. DHARMADAN - J

Applicant is a Lascar-I Class, who belongs to ST community. He is aggrieved by the denial of promotion as Tindel of Lascar/Winchman in spite of his selection and inclusion in Annexure-I select list dated 12th March, 1987.

2. The facts are all admitted in the case. Applicant commenced service as Topaz on 5.5.75. Later the trade was changed as Lascar w.e.f. 20th August, 1985. On 24.12.86 the second respondent called for trade test for appointment of Winchman/Tindel of Lascar. In the test the applicant was

qualified to be promoted as Winchman/Tindel of Lascar in the vacancy which existed as on March 1987 on account of his pass in the trade test. He also passed in the same year in swimming test. Accordingly, his name was included in the panel prepared for promotion on 12.3.87, Annexure-I. Three other persons who are at serial Nos. 1 to 3 in Annexure-I were promoted as per order dated 28.3.87, Annexure-II. But the applicant was not promoted. He filed representation which was disposed of as per impugned order, Annexure-III, dated 5.11.91 intimating him that he was not qualified. On 13.2.93 the third respondent who also belongs to ST community was promoted as Tindel of Lascar along with three other persons. The Commander Superintendent issued Annexure-VI order dated 15.1.93 stating that third respondent has qualified in the trade test held in 1978-79 and swimming test in June/July, 1987 and his name was included in the panel published in February, 1992.

3. Applicant is aggrieved by the impugned orders, Annexures-III, IV and VI, and he is challenging all these orders and also the rules. He also prays for a direction to respondents to promote him to the post of Tindel of Lascar with effect from the date of Annexure-II.

4. Respondents in the reply admitted that applicant was duly qualified for promotion to the post of Tindel of Lascar in December, 1986, even before the 3rd respondent became fully qualified. At the time of Annexures-I and II there was a vacancy for appointment of a ST candidate. But no appointment was made to that vacancy. No reason has been given for denying the applicant promotion to the post in the vacancy which existed in March, 1987, along with others who were included in the panel, Annexure-I. The reason for the appointment of the third respondent as mentioned in the reply is that he is senior in the category of Lascar. But the applicant was qualified before he became qualified.

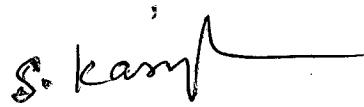
There was also an existing vacancy at the relevant time as indicated above. But the respondents 1 and 2 promoted the 3rd respondent as Tindel of Lascar when a subsequent vacancy arose after drawing a panel on 11.2.92 as per Annexure-IV order. There is no explanation for denying that promotion to the applicant considering the fact that he became qualified before the 3rd respondent passed the swimming test and fully qualified.

5. Admittedly, the applicant was qualified for promotion to the post of Tindel of Lascar/Winchman with effect from the date of Annexure-I and he was included in the panel in March, 1987. There were vacancies. When the three other persons included in the panel, Annexure-I, were promoted, the applicant also could have been promoted. Presumably because the third respondent was not qualified at that time when Annexure-I rank list was prepared and his name was not included in the list, the appointment was delayed. But, later, when he became qualified in July, 1987 he was considered in a subsequent post for giving promotion. In view of the fact that the applicant has become qualified much before the third respondent became qualified for the post and there was an existing vacancy for ST, the denial of appointment to the applicant in March, 1987 is illegal. The respondents 1 and 2 should have granted promotion to the applicant in preference to the third respondent.

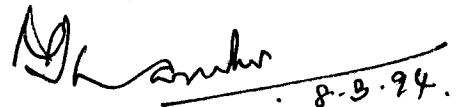
6. Having regard to the facts and circumstances of the case, we are of the view that denial of promotion to the applicant at the appropriate time in the year 1987 in spite of the fact that his name was included in the panel is illegal. In this view of the matter, the impugned orders, Annexures-III, IV and VI in so far as the appointment of third respondent to the post of Tindel of Lascar cannot be

sustained. We quash the same to the limited extent as indicated above. It goes without saying that the applicant is fully qualified and eligible for promotion on the basis of his pass in the trade test in 1987 and ~~he deserves~~ consideration and appointment as Tindel of Lascar/Winchman in accordance with law in the place of third respondent if he is otherwise suitable for promotion. This shall be done within a period of three months from the date of communication of this order.

7. The application is allowed as above. There will be no order as to costs.



(S.KASIPANDIAN)
MEMBER(A)



8-3-94.

(N.DHARMADAN)
MEMBER(J)

v/-