

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 324 of 2001

Thursday, this the 20th day of March, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. A. Ukkas,
S/o P.C. Yousuf,
Engine Crew, M.V. Dweep Setu, Kavaratti,
Union Territory of Lakshadweep,
residing at Kadamath Island.Applicant

[By Advocate Mr. P.V. Mohanan]

Versus

1. The Administrator,
Union Territory of Lakshadweep.
2. The Port Officer,
Port Department, Kavaratti,
Union Territory of Lakshadweep.
3. Union of India, represented by its
Secretary, Ministry of Home Affairs,
New Delhi.Respondents

[By Advocate Mr. S. Radhakrishnan (R1 & R2)]
[By Advocate Mr. S.K. Balachandran, ACGSC (R3)]

The application having been heard on 20-3-2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant commenced service as a Boat Lascar in the
Port Department with effect from 25-7-1989 in the scale of pay
of Rs.750-940. The next promotion post is Engine Crew/Deck
Crew/Greaser, appointment to which is to be made in accordance
with the Lakshadweep Administration Shipping and Transport
Service, Group C and D Recruitment Rules, 1986 as amended by
Notification dated 6-3-1989. The post of Engine Crew is to be
filled according to the said Recruitment Rules by promotion
from the post of Lascars having 5 years experience with Pass in

the trade test to be conducted by a Board of Officers constituted for the purpose. The applicant passed the trade test in November, 1997. Since 8 posts of Engine/Deck Crew had to be filled immediately to avoid lapsing of the posts, Annexure A1 notification was issued on 21-11-1994 calling for willingness of Lascars for adhoc appointment. The applicant was one among those who had expressed their willingness. Many of his seniors did not express their willingness. By Annexure A2 order dated 26-1-1995, 18 Lascars including the applicant were promoted on adhoc basis for a period of six months. Their adhoc promotion was extended of and on and they were granted increments in the time scale of the post of Engine/Deck Crew. For working as Engine/Deck Crew in a seagoing vessel, a Continuous Discharge Certificate (CDC for short) under Section 99 of the Merchant Shipping Act, 1958 issued by the Mercantile Marine Department is required. The applicant possessed such a certificate, while his seniors who did not express their willingness for promotion on adhoc basis did not have such certificates. Finding that the applicant who has been working on adhoc basis from 1995 onwards is not being regularized on the post of Engine/Deck Crew, he made a representation on 26-11-1999 (Annexure A4) seeking regularization. Finding no response to his representation, the applicant filed OA No.470/2000 before this Bench of the Tribunal, which was disposed of with a direction to the 2nd respondent to consider the representation of the applicant and to give him an appropriate reply. While so, on 14-8-2000, two orders (Annexure A6 and Annexure A7) were issued. Annexure A6 was an order by which 24 Lascars were promoted as Engine/Deck Crew and the applicant who did not come within the zone of consideration in the seniority of Lascars was reverted. By Annexure A7 order the applicant's representation was disposed of turning down his claim for regularization in the post of Lascar on the ground



that he did not come within the zone of consideration for promotion as his seniors were to be promoted and that for want of vacancy he had to be reverted. However, immediately thereafter on 29-8-2000 the Port Officer issued Annexure A8 order directing the applicant after joining the post of Boat Lascar to proceed to Kochi and join at M.V.Dweep Sethu on work arrangement basis until further orders, in view of the fact that there is a scarcity of CDC holders among staff under the Port Department. By Annexure A9 order dated 21-9-2000 the Port Officer ordered that the applicant would be deemed to have been reverted to the post of Boat Lascar on 29-8-2000 and he would be permitted to continue on board M.V.Dweep Sethu until further orders. The grievance of the applicant is that while he has been officiating as Engine/Deck Crew on the basis of selection and qualification possessed by him from January, 1995 onwards, there is absolutely no justification for not regularizing him on the post of Engine/Deck Crew, while persons who did not possess the CDC have been promoted. It is alleged in the application that eventhough the applicant had been reverted on paper by Annexure A6 and A7, he is continuing as an Engine Crew discharging all the duties of an Engine Crew, but denied the wages attached to the post. The applicant has, therefore, prayed for the following reliefs:-

- "i) To call for the records leading to Annexure A6 and A7 and set aside the same in so far as it does not appoint the applicant as Engine Crew on regular basis and in so far as it reverts the applicant to the post of Boat Lascar.
- ii) To direct the respondents to promote/appoint the applicant as Engine Crew/Deck Crew in Lakshadweep Administration Shipping and Transport Service on regular basis.
- iii) To direct the respondent No.1 and 2 not to revert the applicant from the post of Engine Crew/Deck Crew to Boat Lascar.
- iv) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice.

v) To pay the salary of the applicant as Boat Crew with effect from 14-8-2000."

2. Respondents seek to justify the impugned orders on the ground that in terms of the Recruitment Rules the post of Engine/Deck Crew are filled by promotion of Lascars on the basis of seniority subject to trade test, that those who have been promoted are seniors of the applicant, that the applicant being junior could not be promoted and that he is now being allowed to work on board as a work arrangement and is not, therefore, deprived of any benefit.

3. We have gone through the entire pleadings and materials placed on record and have heard Shri P.V.Mohanan, learned counsel for the applicant and Shri S.Radhakrishnan, learned counsel for respondents 1 and 2.

4. The applicant having been promoted as Engine/Deck Crew only on adhoc basis by Annexure A2 order making it clearly understood that the promotion would not confer on him any right for regularization or for seniority against his seniors in the grade of Lascars, his claim for regularization with effect from the date of his appointment as Engine/Deck Crew cannot be sustained. However, although 18 persons have been promoted by Annexure A6 order on the recommendations of the DPC as Engine/Deck Crew, the department could not dispense with the service of the applicant for the reason that among the Boat Crew there were no sufficient number of people who have the CDC which is required for working as an Engine/Deck Crew according to the Merchant Shipping Act, 1958. The applicant who possesses the CDC is, therefore, although reverted on paper as Lascar, continued to perform the duties of Engine/Deck Crew under specific orders issued by the Port Officer taking note of the fact that there is a constraint on account of shortage of

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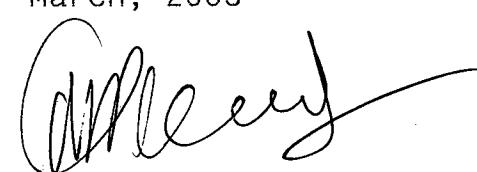
persons who have the necessary CDC. The reversion of the applicant is also said to have been deemed in Annexure A9 order. Therefore, virtually, although the applicant was by Annexure A6 and A7 orders reverted from the post of Engine Crew, as a matter of fact he is continuing to discharge higher duties and responsibilities on the post of Engine Crew. Under these circumstances, we are of the considered view that it is absolutely unjust to deny the applicant the pay and allowances attached to the post of Engine/Deck Crew.

5. In the light of what is stated above, while declining to grant the reliefs as sought in the application, viz. regularization in the post of Engine/Deck Crew, we dispose of the Original Application directing the respondents to pay to the applicant the pay and allowances attached to the post of Engine/Deck Crew so long as his services are utilized as Engine/Deck Crew. The above direction shall be immediately complied with, at any rate within a period of one month from the date of receipt of receipt of a copy of this order. No order as to costs.

Thursday, this the 20th day of March, 2003



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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