

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 37 of 2010

Tuesday, this the 16th day of August, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

K.T. Francis, Seaman,
Customs Preventive Divisional Office,
Central Revenue Buildings, Mananchira,
Calicut.

..... **Applicant**

(By Advocate – Mr. C.S.G. Nair)

V e r s u s

1. Union of India rep. by its Secretary,
Department of Revenue, North Block,
New Delhi 110 001.
 2. The Chief Commissioner of Central Excise & Customs,
Central Revenue Building, I.S. Press Road, Cochin 682 018.
 3. The Commissioner of Customs (Preventive),
Central Revenue Buildings, I.S. Press Road,
Cochin 682 018.
 4. Sri Promod Nair, Assistant Director (Marine),
Office of the Commissioner of Customs (Preventive),
Central Revenue Buildings, I.S. Press Road,
Cochin 682 018.
 5. The Assistant Commissioner of Customs,
Customs Preventive Division, Central Revenue Buildings,
Mananchira, Calicut.
 6. A.O. Rajeev, Senior Deck Hand,
Customs Marine Wing, Beypore,
Calicut.
- **Respondents**

[By Advocate – Mr. Millu Dandapani, ACGSC (R1-3 & 5)]

This application having been heard on 16.08.2011, the Tribunal on the



same day delivered the following:

ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicant is a retired employee of the Indian Navy. He retired while working as a Petty Officer. He was recruited as a Seaman in 1998. The next promotion to the post of Seaman is Senior Deck Hand. But the applicant was deputed to the divisional office and was assigned ministerial work in 2001. Subsequently when vacancies arose in the post of Senior Deck Hand the applicant was called for interview but he was not selected. According to him, his non-selection is actuated by malafides. The Departmental Promotion Committee (in short DPC) constituted is not in accordance with rules, in that one of the three members to be nominated to the DPC was not a Marine Officer of Directorate of Preventive Operations which was subsequently renamed as Commissionerate (Directorate) of Logistics. According to him the 3rd member was a Marine Officer from the very same commissionerate and not from the Directorate of Preventive Operations now Commissionerate (Directorate) of Logistics. It is contended that the 6th respondent who is junior to the applicant was selected along with three others and that the selection of the 6th respondent is a favouritism shown to him. Impugning the whole selection this Original Application has been filed. The applicant seeks to quash Annexure A-15 order of appointment issued to the 6th respondent. Though the 6th respondent was served with notice, he is not present today nor he has entered appearance through counsel.



2. In the reply statement filed for and on behalf of respondents Nos. 1-3 and 5 it is stated that the DPC was constituted as per instructions in this regard and that the proceedings were conducted in accordance with the government instructions and rules. The composition of the DPC for Group-C and D as per Recruitment Rules is Additional Collector/Deputy Collector (now designated as Additional Commissioner/Deputy Commissioner Customs & Central Excise (Chairman). Assistant Collector (now Assistant Commissioner) Customs & Central Excise (Member) and a Marine Officer from DPO (Member). As per office letter C. No. II/39/3/2009 Confdtl CCP dated 12.10.2009 the Additional Director (Marine), Office of Director of Preventive Operations (now designated as Director of Logistics) was requested to nominate an officer to the DPC to fill the vacancies in the Marine Wing of this Commissionerate. Accordingly, Additional Director (Marine) with the approval of Commissioner (Logistics) (earlier designated as Director of Preventive Operations) vide letter No. 203/4/DOL(AS) 2006, dated 19.10.2009 nominated 4th respondent as a Member of the DPC from the office of the Directorate of Logistics. Annexure R-1 is a copy of the said letter. They have denied the allegations that the Assistant Director Marine was not competent to assess the work in Deck side. The recruitment rules envisage that a Marine officer from DPO shall be a member of the DPC and Assistant Director (Marine) posted in Cochin represented the DPC on the basis of his nomination by the competent authority. Thus the committee was constituted in accordance with law. The selection of the Senior Deck Hand as per recruitment rules is not based on seniority perse but amongst from the Seamen with five years service in the grade subject to qualifying the



interview conducted by the Department. Seniority is one of the condition for promotion to the post of Senior Deck Hand grade among those who have completed five years service. The applicant was not declared fit by the DPC and he was not promoted. The interview was also conducted by the DPC as per rules and instructions in this regard and there is no malafide in not selecting the applicant. They seek for the dismissal of the Original Application.

3. In the rejoinder statement filed by the applicant he has reiterated the contentions raised in the OA and contended that the 4th respondent being a Marine Officer of the Commissionerate of Customs Preventive, Cochin should not have been included as a member of the DPC.

4. We have heard the learned counsel Mr. C.S.G. Nair appearing for the applicant and Mr. Millu Dandapani, ACGSC appearing for respondents 1-3 & 5.

5. Admittedly the vacancy arose for the post of Senior Deck Hand and the qualification prescribed for promotion is five years service as Seaman in that grade subject to qualifying in the interview for the post of Senior Deck Hand. That the applicant satisfied the requisite qualification for being considered for promotion by the DPC. That he was interviewed by the DPC constituted for the purpose but he was not selected. As per column 14 of the recruitment rules Annexure A-14 the DPC consists of three members (1) Additional Collector/Deputy Collector (Personnel & Vigilance) of Customs

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& Central Excise Department as Chairman, (2) Assistant Collector of Customs & Central Excise Department (Administration & Establishment) as Member and (3) a Marine Officer from the DPO as a member and in case none of the above members belong to the SC or ST, a Group A officer from outside the department belonging to the SC or the ST shall also associate as a member of DPC. The prime contention of the applicant is that one of the members of the selection committee is to be a Marine Officer from the DPO and in this case he was the 4th respondent was a Marine Officer from the same commissionerate and not from the DPO. Therefore, it invalidates the selection procedure. In answer to this in the reply filed by the official respondents it is specifically stated that the Commissionerate of DPO was addressed to nominate a person who in turn nominated the Marine Officer the 4th respondent herein. Annexure R-1 is the proceeding issued by the Additional Director (Marine) nominating the 4th respondent as a member of the committee. It is to be noticed that the applicant had appeared for the interview and if there was any defect in the constitution of the selection committee he had a right to challenge the constitution then and there itself. Even assuming that the fact about the invalidity of the committee constituted for the reason that the 4th respondent is not an officer of DPO the applicant knew it at least after he appeared in the interview so at least within a reasonable time and as early as possible a challenge ought to have been made. Not only he did not file any application before this Tribunal but not even a representation immediately has been made before the selection procedures were completed and result announced. Therefore, going by the settled law once a candidate appears for the selection he cannot thereafter



challenge the constitution of the selection committee. In this connection we only refer to the relevant paragraph of the decision of the Apex Court in Chandra Prakash Tiwari & Ors. Vs. Shakuntala Shukla & Ors. - 2002 (6) SCC 127 quoted below:-

“32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status - the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhawan pertaining the doctrine of Estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in Om Parkash Shukla (Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors., [1986] Supp. SCC 285) a Three Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a Petition challenging the said examination would not arise.”

Further the concerned commissionerate had taken steps for nomination of a member for DPC and by Annexure R-1 it shows that the concerned Directorate had nominated the 4th respondent as a member for the DPC. For the above reasons we do not think that there is any merit in the contentions now raised.

6. The next contention advanced on behalf of the applicant is that undue favouritism had been shown in favour of the 6th respondent. In this case admittedly, four posts were filled up three of them to be seniors to the applicant and the only other candidate selected is the 6th respondent who is junior to the applicant. According to the applicant selection of his junior is



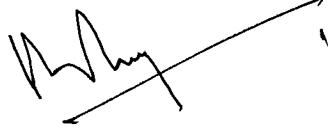
one of the reason to show that the favouritism has been shown. The another reason is that the applicant has been asked only one question as to whether he is prepared to go to Madras which according to him he has answered in affirmative and no other questions have been asked. We have already perused the relevant rules. Promotion to the post of Senior Deck Hand is to be made by selection. Seniority by itself is not a criteria for an automatic promotion. On the other hand from those with five years of service in the feeder category the selection committee will select suitable candidates for appointment as Senior Deck Hand. The further fact that as to whether what are the questions asked and whether only one question is asked are matters of the procedure by the selection committee on which this Tribunal cannot go into further details in the absence of any further materials. Further there are three members in the selection committee and it is the overall assessment by a committee consisting of three members that a final selection is made and further the 4th respondent is only the 3rd member and going by the official designation he is not superior to others. Therefore the allegation against the 4th respondent cannot in any way invalidate the selection. There is no averment or statement alleging any such malafide against other two members. Further merely because a junior is selected is no reason for invalidate selection. Mere allegation of bias is not substitute as proof of it. There are no materials to up set the selection. The fact that the 4th respondent has not filed any reply statement by itself is no reason to up set a selection. In the absence of any relief claimed against the 4th respondent, the validity of the selection has to be decided based on careful consideration of the materials placed on record.



7. Based on the foregoing discussions, we find that the non-selection of the applicant cannot be held to be vitiated for the reasons as advanced in the OA. We find no merit in the OA and accordingly it is dismissed. No costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”