

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.41/06

Thursday this the 26th day of July 2007

C O R A M :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER**

**K.S.Emmanukunju,
Engineer, CPC Jayanti,
C/o.Sea Patrolling Unit Beypore, Kozhikode.**

...Applicant

(By Advocate Mr.V.V.Surendran)

Versus

1. **Union of India represented by its Secretary,
Ministry of Finance, Department of Revenue,
CBEC/(Ad.II-A), New Delhi.**
2. **Commissioner,
Directorate of Logistics,
Customs and Central Excise,
Lok Nayak Bhavan, IVth Floor,
Khan Market, New Delhi – 110 003.**
3. **The Commissioner of Central Excise,
Central Revenue Buildings, Cochin – 18.**
4. **The Commissioner, Preventive,
Central Revenue Buildings, Cochin – 18.**
5. **The Commissioner of Central Excise & Customs,
Central Excise Commissionerate, Calicut,
Mananchira, Calicut – 673 001.**
6. **The Secretary,
Central Board of Excise & Customs,
New Delhi.**

...Respondents

(By Advocate Mr.S.Abilash,ACGSC)

**This application having been heard on 26th July 2007 the Tribunal on
the same day delivered the following :-**

.2.

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

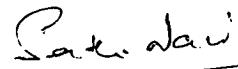
Counsel for the applicant has not been present on 23.3.2007 4.6.2007, 11.7.2007 and 17.7.2007. On 2.7.2007 he was present but requested for an adjournment of the case. We find that the applicant is not interested in pursuing the case. The O.A is, therefore, dismissed for default.

(Dated the 26th day of July 2007)



K.B.S.RAJAN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.41/2006

Friday this the 2nd day of November,2007

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**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

K.S.Emmanukunju,
Engineer, CPC Jayanti,
C/o Sea Patrolling Unit, Beypore,
Kozhikode.Applicant

(By Advocate Mr. V.V.Surendran)

V.

- 1 Union of India, represented by
its Secretary, Ministry of Finance,
Department of Revenue, CBEC(Ad.II.A)
New Delhi.
- 2 Commissioner, Directorate of Logistics,
Customs and Central Excise,
Lok Nayak Bhavan, IVth floor,
Khan Market, New Delhi-110 003.
- 3 The Commissioner of Central Excise,
Central Revenue Buildings,
Cochin.18.
- 4 The Commissioner, Preventive
Central Revenue Buildings, Cochin.18.
- 5 The Commissioner of Central Excise & Customs,
Central Excise Commissionerate, Calicut
Mananchira, Calicut-673001.
- 6 The Secretary,
Central Board of Excise & Customs,
New Delhi.Respondents

(By Advocate Mr. S.Abilash, ACGSC)

This application having been finally heard on 26.9.2007, the Tribunal on
2.11.2007 delivered the following:

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ORDER

HO'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is presently working as an Engineer in Customs Patrol Craft (CPC for short) under the 5th respondent. This is a second O.A filed by him seeking the same reliefs, namely, a direction to the respondents to deem his date of promotion to the post of Engineer as 1.1.85 instead of 1.5.95 and to pay him salary and other benefits accruing thereof as he was discharging the duties of Engineer from the former date.

2 The facts of the case in brief are as under:-

Before joining the respondent department, on 25.11.1974 as an Engineer Mate, he was working in Indian Navy as a "Loading Engineering Mechanic". When the applicant made a representation to the respondents in 1989 for his promotion as Engineer, the Directorate of Preventive Operations, Customs & Central Excise, New Delhi informed the 3rd respondent that they had already taken up the entire issue of promotional prospects of the entire marine crew manning the Customs Marine Fleet with the Ministry of Finance and the applicant's case for promotion would be considered only after a decision in that regard was taken by the Government and the Recruitment Rules for the respective cadres are framed accordingly. It was only in 1995 that the Draft Marine Organization of Customs & Central Excise Department (Group B Posts) Promotion/Recruitment Rules (Annexure.A1) were issued by the respondents and according to the said Rules, the first method of recruitment for the post of Engineer is by promotion and the Engineer-Mates with minimum 7 years service are eligible category for such promotion. Finally, the applicant was given promotion as Engineer on ad



hoc basis vide Annexure.A.5 order dated 1.5.1995. Applicant's contention was that since the requirement for promotion to the post of Engineer was only 7 years service as Engineer-Mate, he became eligible to that post on 25.11.1981. He further stated that in the year 1985, there were 4 vacancies of Engineers in the CPC occurred due to the retirement of the incumbents but the respondents did not promote any one against those vacancies. His contention is that being the senior most Engineer-Mate as per both Annexure.A2 Seniority List dated 12.11.1987 and the Annexure.A4 Seniority List as on 1.1.93 dated 10.6.93, though he was not promoted, he was discharging the duties of Engineer from 1.1.85 onwards. He has also contended that some of his juniors of Mumbai and Bangalore Commissionerates were promoted earlier than him, overlooking his seniority. The respondents issued the Annexure.A6 draft All India Seniority List of Marine Engineers on 24.9.98 showing his deemed date of appointment to post of Engineer as 1.5.95. When the said seniority list was circulated vide Annexure.A7 letter dated 30.9.98, the applicant submitted the Annexure.A8 representation dated 6.10.98 to re-fix his seniority as Engineer taking into consideration of his No.1 position in the seniority list of Engineer Mates. Thereafter, he made Annexures A8, A9,A10 an A11 representations dated 6.10.98, 22.10.98 , 11.1.99 and 3.2.99 respectively. However, the 3rd respondent vide Annexure.A12 letter dated 8.4.99 declined the requests of the applicant holding that his promotion in May, 1995 as Engineer was based on Draft Recruitment Rules and, therefore, it was purely on ad hoc basis and it was not possible to regularize his ad hoc service as Engineer granting his retrospective promotion and to re-fix his seniority position. Meanwhile, the Skipper-



Mates, Shri S.P.Singh and Shri G.D.Shukla filed O.A 394/95 before the Bombay Bench of this Tribunal and on the directions of the Tribunal, they were granted deemed promotion as Skipper on ad hoc basis w.e.f 1.1.85. Consequently, vide Annexure.A13 letter dated 8.6.99, the respondents revised the common seniority of Engineers, Skippers etc. incorporating the names of the said S.P.Singh and G.D. Shukla with their deemed date of promotion as 1.1.1985. The applicant was shown junior to them with date of ad hoc promotion as Engineer as 1.5.1995. The applicant submitted Annexure.A14 representation to the 3rd and 4th respondents again requesting them to re-fix his date of promotion, seniority and consequential enhancement of scale of pay w.e.f November, 1984. He further made Annexures.A15, A16 and A17 representations dated 7.1.2000, 16.3.2000 and 23.10.2000 respectively to different concerned authorities but without any response. Since the objection raised by the respondents for his promotion as Engineer w.e.f Nov. 1984 was that the Recruitment Rules were not finalized, he pointed out in his representation that in the case of S/Shri S.P.Singh and G.D.Shukla, they have done it w.e.f 1.1.85 on the directions of this Tribunal even in the absence of the Recruitment Rules. The applicant has, therefore, taken up the matter with the Respondent No.2 pointing out the anomalous situation created by the promotion of his juniors S/Shri S.P.Singh and G.D.Shukla in the Bombay Commissionerate and requested them to convene a centralized DPC to re-adjust the seniority of the Marine Staff promoted from Group 'C' and 'D' with retrospective effect.

3 Aggrieved by the non-consideration of the various representations, the applicant filed OA 1125/2001 before this Tribunal

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seeking a direction to the respondents to re-fix the seniority of the applicant and to deem that his date of promotion to the post of Engineer was from 1.1.85 instead of from 1.5.95 and to pay him salary and other benefits of Engineer from the date on which he was deputed to do the work of an Engineer and to direct the respondents to effect his promotion retrospectively from the date on which he started to officiate as Engineer and to pay him the salary and other allowances from that date. However, this Tribunal vide Annexure.A18 order dated 17.1.2002 dismissed the O.A with the following observations:

"We have heard the learned counsel of the applicant and also carefully gone through the materials placed on record. Even on the applicant's own showing, the first time the applicant was appointed as Engineer even on ad hoc basis was only on 1.5.95. in the seniority list of Engineers etc the applicant's name has been shown at the bottom giving the deemed date of promotion in that grade as on 1.5.95. Merely on the allegation of the applicant that he has been discharging the duties of the post of Engineer without any order of appointment, the applicant is not entitled to claim seniority with effect from 1.1.1985. If the applicant had any grievance regarding non-promotion at the appropriate time or having been overlooked in the matter of promotion, he should have taken recourse to the legal remedies at the appropriate time. It is well settled that seniority would count from the date of regular entry in the cadre. The applicant even on ad hoc basis, entered in the cadre of Engineer only on 1.5.1995, and therefore, his claim for seniority as Engineer from 1985 is not founded on any right. As the applicant has not been by any order, put to officiate as Engineer prior to 1995, his claim for arrears of pay and allowances also have no legal basis."

4 The applicant carried the aforesaid orders of this Tribunal in OA 1125/01 by filing OP No. 7212/02(S) before the Hon'ble High Court of Kerala. His contention before the High Court was that the Tribunal did not consider the earlier order passed by it in OA 682/89 – *K.A. M.Kutty V. Union of India and others* (Annexure.A19) and another order in OA 660/1990 – *A Joseph V. Union of India and others* (Annexure.A20) passed



by the Bangalore Bench of this Tribunal. In OA 682/89, the contention of the respondents was that though the applicant was a Skipper-Mate, he was only discharging the duties of Skipper in the absence of the regular incumbent and he was not entitled to be retrospectively promoted as Skipper or to get the pay of the higher post. However, considering the fact that the applicant had been continuously discharging the duties of Skipper from 1.7.80 which was not denied by the respondents in their reply statement, this Tribunal allowed the OA partly and directed the respondents to deem that the applicant therein was officiating as Skipper from 1.1.85 onwards and to fix his pay in the post of Skipper accordingly. In the case of the applicant in OA 660/91 (supra), the respondents conceded that he has been performing the duties of Skipper as well as Skipper-Mate and he was placed in charge to perform the duties of Skipper in addition to his own duties of Skipper-Mate. However, their contention was that placing the applicant to discharge the duties of the post of Skipper from 31.8.83 was only an internal arrangement. In view of the above position, following the orders of this Tribunal in OA 682/89 the Bangalore Bench of this Tribunal also partly allowed the OA with similar directions as in OA 683/89. While disposing of the aforesaid OP vide the Annexure A23 judgment dated 31.7.2005, the Hon'ble High Court agreed with the contention of the applicant and directed the Secretary, Central Board of Excise & Customs, New Delhi to pass appropriate orders after due consideration of the orders in those O.As. It appears that after the judgment of the Hon'ble High Court of Kerala in the aforesaid OP dated 31.1.05, the applicant made a representation to the respondents on 16.3.2005 to promote him also as Engineer with effect from 1.1.85 on the



ground that he was also officiating as Engineer from that date. However, vide the Annexure.A24 order dated 19.9.05, the respondents rejected the request of the applicant on the ground that the applicants in OA 682/89 and 660/91 (supra) are not comparable with the applicant herein for the reasons that the applicants in the former O.As were discharging the functions of Skipper from 1.1.85 and they have been promoted as Skipper on regular basis with effect from the same date in terms of the directions of this Tribunal in those O.As, but in the case of the applicant, there is no evidence to show that he had been discharging the functions and responsibilities attached to the higher post of Engineer from 1.1.85. It was only with effect from 1995 that the applicant was promoted on ad hoc basis to discharge the duties and responsibilities of Engineer (Marine).

5 In the reply filed by the respondents also they have rejected the contention of the applicant that he had been discharging the duties and responsibilities of the higher post of Engineer from 1.1.1985.

6 We have heard Shri V.V.Surendran for the applicant and Mr.S.Abilash, ACGSC for the respondents and considered the rival contentions. The undisputed fact in this case is that the applicant was an Engineer-Mate from 25.11.1974 and next promotional post available for the Engineer-Mates is "Engineer". There were 4 posts of Engineer in the Cochin Collectorate which fell vacant one by one from 1983 to 1991. According to the Annexure.A2 letter dated 12.11.1987 of the Directorate of Preventive Operations, Customs & Central Excise, New Delhi, the applicant was the senior most Engineer-Mate in the All India seniority List. However, the applicant was not even given ad hoc promotion against any of those 4 vacancies pending finalization of the Recruitment Rules. It was

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only in 1995 that the draft Recruitment Rules have become available and the applicant was promoted as Engineer on ad hoc basis. According to the said draft Recruitment Rules which have since been finalized as it is, for promotion to the post of Engineer, only 7 years service as Engineer-Mate was required. On the contrary the applicant had to wait 26 long years to get his promotion as Engineer. The earlier OA 1125/01 filed by the applicant for the same reliefs as those sought in this OA was dismissed mainly on the ground that in the absence of any order of appointment and merely on the averment of the applicant that he has been discharging duties of that post from the said date he was not entitled to claim seniority with effect from 1.1.1985 as Engineer. However, the High Court of Kerala in its judgment dated 31.1.1995 in OP 7212/02(S) held that this Tribunal had not taken into consideration of the orders in earlier two O.As, namely, OA 682/89 decided by this Bench of the Tribunal on 31.7.90 and O.A.660/91 decided by the Bangalore Bench of this Tribunal on 21.10.1992. The High Court has, therefore, directed the respondents to consider the aforesaid aspects and take a decision in the matter. The respondents drew distinction between the case of the applicants in the aforesaid two cases and that of the applicant herein stating that while the applicants in those O.As were Skipper Mates and they were discharging the duties of Skipper in the absence of a regularly appointed Skipper, in the case of the applicant herein, there were no evidence on record to show that he has been discharging the duties and responsibilities attached to the higher post of Engineer. The respondents have not disputed the facts stated by the applicant in this OA that there were four posts of Engineer in Cochin Collectorate and the first vacancy occurred in May, 1983 when the



incumbent Shri R.K.Raman retired on superannuation. Subsequently, other 3 posts also fell vacant and the last vacancy has occurred in December, 1991 with the incumbent Shri A.O.B. Nair was promoted as Workshop Manager,Chaliyam. It is unbelievable that the duties and responsibilities attached to the posts of Engineer have remained unperformed during the period from 1.1.1983 to 1.1.1995 in the absence of the incumbents to those posts. The respondents have no case that any other officers of the higher rank have been entrusted with the additional work of the Engineers in their absence. It is nothing but natural in any department that the senior most officials in the feeder cadre will have to bear the additional burden of the higher post in the absence of the incumbents. Therefore, it cannot be said that the applicant did not perform the duties and responsibilities attached to the post of Engineer till 1995 only because the respondents have not formally assigned those duties by a written order. It is also not explained by the respondents as to how suddenly the duties and responsibilities of the post of Engineer have disappeared with the retirement etc. of the concerned incumbents and emerged them again in 1995 when he was promoted as Engineer on ad hoc basis. We, therefore, reject this contention of the respondents that the applicant has not been performing the duties of the Engineer during the period from 1.1.1985 to 3.4.95 when the post of Engineers were lying vacant in the absence of any specific averment that those duties and responsibilities were assigned to any one else. Only logical conclusion is that the applicant being the Engineer-Mate has been performing the duties of the Engineer from 1.1.85 as claimed by him as in the case of applicants in OA 682/89 and OA 660/91 who were Skipper-Mates and were

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preforming the duties of Skippers. The only difference in this case from those of the applicants in other two OAs is that in those cases the applicants concerned were formally directed to perform the duties and responsibilities of the higher post of Skipper and in the present case there was no such order. The respondents have not made any submission as to how they have got the duties and responsibilities of the post of Engineer performed during the aforesaid period of ten years. We in the above circumstances, consider that the applicant's case is identical to that of the applicants in OA.682/89 and O.A.660/91. We have also considered the contentions of the respondents that the cadre control of Marine Staff was transferred to the concerned Commissionerates in 1989 and the posts of Engineer/Skipper in Mumbai and Bangalore Commissionerates were filled up only from among the employees of those Commissionerates and, therefore, the averment of the petitioner that "some of his juniors in Mumbai and Bangalore Commissionerates were promoted as Engineer overlooking the seniority of the petitioner" was not true. The justification given by the respondents for the promotion of the applicant's juniors is that for the post of Engineer in Bombay or Bangalore, employees of those Commissionerates alone could be considered and the employees of other Commissionerates were not eligible to be considered, even if they have longer years of service. This justification of the respondents for promoting some of the Engineer-Mates in Bombay and Bangalore before the applicant was promoted cannot be accepted because the reason for not promoting the applicant prior to 1995 given by the respondents was a different one, namely, the delay in finalizing the Recruitment Rules. Then the question is how the Engineer-Mates and Skipper Mates in other

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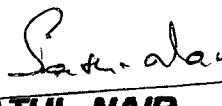
Commissionerates were promoted earlier than the applicant in the absence of the Recruitment Rules which has been issued only by the Annexure A5 order dated 1.5.1995.

7 We, therefore, allow this OA. The applicant shall be deemed to have been promoted as Engineer with effect from 1.1.1985 and his pay in the scale of pay attached to the said post shall be fixed with effect from the same date. As he has already been performing the duties of Engineer w.e.f 1.1.1985, he is entitled to the pay and allowances attached to the said post from the same date and the respondents shall pay him the upto date arrears on account of the fixation of his pay as aforesaid. His seniority position in the All India Seniority List of Marine Engineers, Hull Engineers, Electrical Engineers and Skipper Group 'B' shall also be revised accordingly taking his deemed date of promotion as Engineer w.e.f 1.1.1985 with all consequential benefits. The above directions shall be complied with, within a period of two months from the date of receipt of this order. No order as to costs.

Dated this the 2nd day of November, 2007


GEORGE PARACKEN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN