

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 324/92.

Transfer Application No:

DATE OF DECISION: 1st Dec. 94.

EKNATH M KOLEKAR

Petitioner

G.K.MASAND FOR M/S.NATARAJAN, Advocate for the Petitioners

KHAKRE

Versus

UNION OF INDIA & 3 ORS.

Respondent

P.M.PRADHAN

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R.KOLHATKAR, MEMBER(A)

The Hon'ble Shri D.C.VERMA, MEMBER(J)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar

(M.R.KOLHATKAR)
M(A)

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

O.A.324/92.

EKNATH M.KOLEKAR

... APPLICANT.

V/s.

UNION OF INDIA & THREE OTHERS

... RESPONDENTS.

CORAM:

Hon'ble Shri M.R.Kolhatkar, Member(A).

Hon'ble Shri D.C.Verma, Member(J).

APPEARANCES:

Shri G.K.Masand for M/s.Natarajan, Khakre-
Counsel for Applicant.

Shri P.M.Pradhan, Counsel for
Respondents.

ORAL JUDGEMENT :

DATED : 1st Dec, 94.

I Per Shri M.R.Kolhatkar, Member(A).

1. The applicant retired as Petty Officer from Indian Navy on 30.4.1975 and joined as Skipper Mate in the Marine Prevention Division under Ministry of Finance, Since then he has been holding the post continuously. He passed the examination conducted by Skippers Qualifying Board held in 1981 (vide page-31) Sr.No.12. This shows that the applicant having secured 149/200 marks topped the list of successful candidates. It may be noted that at Sr.No.5 appears one Shri K.A.M.Kutty who obtained 89/200 marks and failed and at Sr.No.7 appears one Shri A.Joseph who obtained 125/200 marks and passed. The reason for referring to these two names will be evident presently.

2. The applicant was ordered to hold charge of the post of Skipper w.e.f. 31/7/82 consequent on Superannuation of Shri A.Hameed, Skipper M.S.T.4 Ratnagiri(vide Annexure-K,page-36). Thus the applicant was holding the charge of Skipper, M.S.T.4 from 31/7/82 onwards. Vide page-43, the applicant was asked to hold the 3rd charge w.e.f.

1/5/84 consequent on retirement of Shri Pran Nath, Skipper C.P.C. Hazarat Mahal. Thus the applicant came to hold the charge of Skipper Mate, Skipper M.S.T.4 and Skipper C.P.C. Hazarat Mahal w.e.f. 1/5/84. The applicant has been representing since August, 83 vide representation at page-38 that having passed the Qualifying Board Examination and holding the additional charge of post of Skipper M.S.T.4 he should be promoted to the post of Skipper. It is clear that there is a vacancy in Ratnagiri Customs Division. The applicant's representation however was rejected vide page-40 because merger of Marine Prevention Department with Coast Guard was under consideration. Subsequently, the applicant made further representations which need not be referred to in detail.

3. In the reply filed by the Department, they have contended that the applicant was confirmed only in 1987 as Skipper Mate and he could not be given promotion prior to that date. The Applicant has actually been promoted on Adhoc basis as Skipper from 13/8/93 vide Ex.R.2 of the Written Statement. It also appears that he could not be considered for promotion earlier because vacancies were not available. As is mentioned in Ministry of Finance letter dated 8/12/86, (Ex.R-1), the department issued a sanction of four temporary posts of Skippers. and it appears that there are 120 posts for Marine Crew in different grades for 12 CPC. It is further stated that order of 8/12/86 has been kept in abeyance. It appears that the order sanctioning full complement of staff ~~for the~~ available number of crafts came to be issued on 2/8/93 and thereafter, applicant has been promoted on Adhoc basis. The department therefore considers that the Applicant could not have been promoted earlier.

4. The Learned Counsel for the applicant had pointed out that the issue involved in this case has been ~~decide~~ rendered by Ernakulam Bench of CAT in O.A.682/89 decided on 31/7/90 vide K.A.M.Kutty V/s. Union of India and three others and subsequent judgement of the Bangalore Bench in OA 660/91 decided on 27/10/82 vide A.Joseph V/s. The Secretary, Ministry of Finance and two others. It may be noted that the list of results of Skippers Qualification Board to which a reference was made earlier includes names of Shri K.A.M.Kutty and Shri A.Joseph who respectively had approached the respective tribunals. In the case of Kutty, which is an earlier judgement, the tribunal considered the fact that Shri Kutty had since retired. They also took note of the advertisement dated 2/12/87 for the post of Marine Supd t. (Deck)/Skipper under Customs Marine Organisation under the Ministry of Finance in which for the post of Marine Superintendent (Deck)/Skipper in scale of Rs.2375-75-3200-EB-100-3500, Skipper Mates upto minimum 10 years of service and those who had passed Skipper's Qualifying Board were held eligible to be considered.

5. Since Shri Kutty had completed 10 years of service as Skippermate on 23/12/84, the tribunal granted relief in following terms:-

In the result, the application is partly allowed. The respondents are directed to deem that the applicant has been officiating as Skipper and fix his pay in the post of Skipper from 1.1.1985 onwards starting from the minimum of the scale of Skippers and giving him increments every year ~~and~~ to pay him arrears of the difference in salaries thus arrived at and actually paid to him till the date of his superannuation and also to fix his retirement benefits on the basis of the pay thus payable to him on the date of his superannuation. There is no order as to costs.

(We note in passing that although the tribunal

had found that Shri Kutty had passed the examination, our record show that Shri Kutty had failed the same).

6. So far as Shri Joseph is concerned, the Bangalore Bench of the Tribunal noted Kutty's case and also noted that Shri Joseph has completed 10 years of service as on 1/1/85 and since Shri Joseph is junior to Shri Kutty, the relief was granted to Shri Joseph in following terms:-

" For the reasons aforesaid we partly allow this application and give the following directions:-

- (i) The applicant shall be deemed to have been officiating on adhoc basis as Skipper with effect from 1.1.1985 and his emoluments should be fixed accordingly in the post of Skipper from 1.1.1985 onwards giving him annual increments due in such scale of pay until his case for promotion to Skipper is considered and he is promoted in accordance with law of so long as he continues in Charge of the post of Skipper.
- (ii) His pay shall be fixed as per the direction aforesaid within two months from the date of receipt of a copy of this order and arrears due to him from 1/1/85 onwards shall be paid to him within a period of two months thereafter.
- (iii) No Costs. "

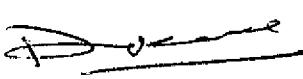
7. There is no doubt that a Government Servant has no right to promotion, but he has a right to be considered for promotion, provided he fulfils minimum qualifications prescribed for the promotional post and there is a clear vacancy. In the present case, there is no doubt ~~that~~ as on 30/4/85 the applicant is eligible, to be considered for the post of Skipper. ~~Since~~ ^{A. H. K.} no recruitment rules were shown to us laying down 10 years of service as Skipper Mate to be eligible for being appointed as Skipper, ~~we have failed to know~~ ^{we have failed to know} ~~excepting~~ the notification of the post referred to above. He also passed the requisite exam. We also take into account the fact that the applicant although he did not

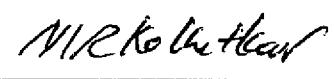
complete 10 years service as on 31/7/82 was actually asked to officiate as Skipper as additional charge from that date. We also note that he held an additional charge consequent on occurrence of vacancy of Skipper, Vasavi from 1/5/84. We are therefore of the view that following the ratio of Kutty and Joseph judgements, the applicant is entitled to be appointed on adhoc basis as Skipper from 1/5/85 and is also entitled to the benefit of holding the additional charge from 31/7/82. We therefore dispose of the OA as under:-

ORDER.

OA is allowed. The respondents are directed to grant the benefits of officiating as Skipper from 31/7/82 to the applicant and also the subsequent adhoc charge held by him from 1/5/84. For this purpose, if the relaxation of the period of three months for which charge allowance is permissible ^{is required} the same should be done by the respondents as per rules.

The Applicant shall be deemed to officiate as Skipper on Adhoc basis from 1/5/85 and his emoluments should be fixed accordingly in the post of Skipper from 1/5/85 onwards giving him annual increments due in the applicable scale of pay till the date of his formal promotion on 13/8/93. His pay shall be fixed as per the directions aforesaid. Necessary action should be completed within four months from the date of receipt of a copy of this order. No order as to costs.


(D.C.VERMA)
M(J)


(M.R.KOLHATKAR)
M(A)

abp.