

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 394/95.

Date of Decision: 19-2-99

S. P. Singh & Another, Applicants.

Shri G. K. Masand, Advocate for Applicant's

Versus

Union Of India & Another, Respondent(s)

Shri M.I. Sethna alongwith  
Shri V. D. Vadhavkar, Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri. D. S. Baweja, Member (A).

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal? X

  
(D. S. BAWEJA)  
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 394/95.

M.P. NO.: 452/98.

Dated the 19<sup>th</sup> day of February, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,  
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

1. S. P. Singh,  
Skipper in the Customs  
Marine Dept. Section (RSR),  
Indira Dock, Bombay.

Residing at -  
Flat No. 224/10/7,  
C.G.S. Colony, Antop Hill,  
Bombay - 400 037.

2. G. D. Shukla,  
Skipper in the Customs  
Marine Department  
Section (RSR).

Residing at -  
Flat No. 661/II, Bldg. No. 66,  
C.G.S. Colony, Antop Hill,  
Bombay - 400 037.

(By Advocate Shri G. K. Masand)

... Applicants

VERSUS

1. Union Of India through  
The Secretary in the  
Ministry of Finance,  
Department of Revenue,  
New Delhi.

2. Collector of Customs,  
New Customs House,  
Ballard Estate,  
Bombay - 400 038.

(By Advocate Shri M.I. Sethna  
alongwith Shri V.D. Vadhavkar)

... Respondents.

O R D E R

[ PER.: SHRI D. S. BAWEJA, MEMBER (A) ]

This application has been filed jointly by two applicants who are working as Skipper in Customs Marine Department at Mumbai. When Customs Marine Department was set up, the applicants were appointed as Skipper Mates at Mumbai in 1974. The next promotion for the Skipper Mate is Skipper, who is incharge of the Craft. The case of the applicant is, that at the relevant time of setting up of Customs Marine Department there were five posts of Skippers at Mumbai and four of these Skippers retired during the year 1982 to 1985. The respondents did not fill up the vacancies even though the applicants were eligible to be promoted as Skippers <sup>because</sup> in terms of letter dated 27.09.1983 it was indicated that promotions and recruitment against the vacancies in Customs Marine Department including the posts of Skipper is held in abeyance in view of the pending merger of the organisation with Coast Guard Organisation. The applicants contend that no Craft can be operated on the sea without the Skipper and therefore, the applicants alongwith others who were working as Skipper Mates and fully qualified to hold the post of Skipper, were asked to discharge the duties of Skippers in addition to their own duties. The applicants further submit that similar situation <sup>the</sup> was existing in other places at Bangalore and Cochin and Skipper Mates were asked to perform the duties of Skippers in addition to their own duties on account of the vacancies. There also the incumbents were not paid any Pay and Allowances attached to the post of

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Skipper. One Shri K.A.M. Kutty challenged the matter before the Ernakulam Bench through O.A. No. 682/89. This O.A. was decided as per order dated 31.07.1990 with the direction that the applicant shall be deemed to have been officiating on adhoc basis as Skipper with effect from 01.01.1985 and his emoluments should be fixed accordingly and also allowed annual increments and regular promotion as Skipper as per law or so long as he continues to discharge the duties of the post of Skipper. Another O.A. No. 660/91 was filed by one Shri A Joseph before Bangalore Bench and the Bangalore Bench by relying on the judgement of Ernakulam Bench in the case of K.A.M. Kutty as per order dated 21.10.1992 allowed the same benefits as allowed to Shri K.A.M. Kutty by Ernakulam Bench. The applicants' claim is that, as per the seniority list of Skipper Mates, they are both senior to Mr. K.A.M. Kutty and Mr. A. Joseph and, therefore they are entitled for the same benefits. Both, Mr. K.A.M. Kutty and Mr. A. Joseph were promoted to the post of Skipper w.e.f. 01.01.1985 as per the order dated 23.04.1993. On issuance of this order, both the applicants made a representation as per letter dated 06.09.1993 with a request that they should be given identical benefits, as both Mr. Kutty and Mr. Joseph were junior to them as Skipper Mates. However, the claim of the applicants has been rejected by the respondents as per order dated 08.03.1995. Feeling aggrieved by the same, the present application has been filed on 27.03.1996 seeking the following reliefs :

To direct the respondents to pay to the applicants the pay and allowances attached to the post of Skipper w.e.f. 01.01.1985 and

also allow the annual increments as well as other consequential benefits as allowed to their juniors S/Shri K.A.M. Kutty and A.Joseph.

2. The respondents have filed written statement opposing the application. The respondents submit that the claim of the applicants has been rejected, as the benefits of the orders of Ernakulam Bench and Bangalore Bench could not be extended to other Marine staff and further, the applicants had neither <sup>claimed</sup> any ground for performing the duties of Skipper in addition to their own duties nor they had produced a copy of the result regarding the passing of the qualifying test prescribed for the post of Skipper. The respondents further submit that the applicants are claiming the benefits of the orders of the Tribunal only on the basis of seniority, which cannot be allowed unless and until the applicants have worked as Skipper. The respondents have further explained that as per the Seniority List issued on 21.03.1984 there was only one vacancy of the Skipper and other vacancies of Skipper<sub>s</sub> at Mumbai arose on 31.07.1984, 30.06.1985, 31.03.1986 and 30.09.1990 and not between 1982 and 1985, as claimed by the applicants. The respondents further submit that the applicants are not entitled for claiming the promotion under the Next Below Rule, as Shri K.A.M. Kutty and Shri A. Joseph were from different Collectorates. The respondents submit that the applicants have no case and the present application deserves to be dismissed.

3. The applicants have not filed any rejoinder reply. Heard the arguments of Shri G. K. Masand and Shri M.I. Sethna alongwith Shri V.D. Vadhavkar, the Learned Counsel for the applicants and respondents respectively.

4. The Counsel for the respondents, at the outset, during the arguments, opposed the application on the plea that it suffers from delay and laches and is barred by limitation. The Learned Counsel for the applicants strongly reacted to this by stating that respondents have not taken the plea of limitation in the written statement and cannot take the same at the stage of final hearing. The Counsel for the applicants further submits that as brought out in para 3 of the O.A., the application is within the limitation period. The Counsel for the applicants explained that the order in O.A. No. 660/91 in the case of Shri A. Joseph decided on 21.10.1992 was implemented by the respondents on 10.03.1993 by promoting Shri A. Joseph. Subsequent to this order dated 10.03.1993, the applicants made a representation dated 06.09.1993 and the same has been rejected by the respondents vide letter dated 08.03.1995. The applicants' contention is that the O.A. filed on 27.03.1995 after the rejection of the representation on 08.03.1995, is within the limitation. The respondents on the other side have argued that the applicants are claiming the relief of pay and allowances attached to the post of Skipper w.e.f. 01.01.1985 by filing the O.A. on 27.03.1995 and, therefore, it is barred by limitation. Respondents state that in reply to para 5 in the O.A., applicants' contention that the application is within the limitation is denied. It is also

contended by the respondents that the applicants at no stage made <sup>any</sup> representation regarding their promotion as Skipper and made a representation only with reference to the order in the case of Shri A. Joseph. The respondents further state that a decision in another O.A. cannot give a cause of action to the applicants, <sup>even</sup> though similarly placed as they were not vigilant and did not agitate the matter at an appropriate time. Considering the rival contentions, we note that the applicants have not brought out any representation on record that they have been persuing the matter for their promotion from 1985 onwards. It is also noted that the applicants made a representation <sup>on 06.09.1993</sup> for claiming the benefits as allowed in the case of Shri A. Joseph. The applicants have brought on record the judgement of Ernakulam Bench in the case of Shri K.A.M. Kutty decided on 31.07.1990 <sup>but have not stated</sup> as to why did not agitate the matter with reference to this order. <sup>on the face of it</sup> With these facts, the limitation should come in the way of the applicants in claiming the relief. However, considering the facts and circumstances of the case, we are not inclined to defeat the claim of the applicants on the ground of delay and laches and limitation. As brought out above, two of the colleagues of the applicants, S/Shri K.A.M. Kutty and A. Joseph have been allowed adhoc promotion as Skipper from 01.01.1985 and admittedly, they are juniors to the applicants as Skipper Mates based on <sup>record</sup> the seniority list brought on by the applicants at Annexure-I. Further, the applicants have subsequently brought on record one more order dated 01.12.1994 of this Bench in O.A. No. 324 of 1992 [Eknath M. Kolekar V/s. Union Of India & Others] where

based on the orders in case of K.A.M. Kutty and A. Joseph, the same relief has been allowed. Shri Kolekar is also junior to the applicant. It is <sup>also</sup> noted that though in all the three O.As. the claim for pay and allowances by the <sup>Mates</sup> Skipper who were working as Skipper had been made after several years but still the claim was allowed without limitation coming in the way. In the present case, an anomalous situation has arisen, where the juniors have been allowed the pay and allowances to the post of Skipper while the seniors have not been allowed the same by the respondents on the plea that the three orders were in personam and not in rem. In view of this, we are inclined to consider the present application on merits by over-ruling the objection of delay and laches and limitations raised by the respondents.

5. The applicants are praying that they are similarly placed to the applicants in three O.As. referred to above, where the benefit of pay and allowances for the post of Skipper from 01.01.1985 has been allowed. The respondents have however contested it by stating that the three O.As. have been decided based on the facts and circumstances arising in those O.As. and the applicants are not similarly placed. The respondents have argued that neither the applicants at any stage made any claim for performing the duties of Skipper in addition to their own duties nor have they produced any copy of the result <sup>of</sup> passing Skipper qualifying test. On going through the rival pleadings, we are not persuaded to accept the stand of the respondents. The

applicants have brought out that the vacancies of Skippers were existing at Mumbai also, which had arisen due to retirement and the post of Skippers had not been filled up in view of the pending issue regarding merger of Customs Marine Department with Coast Guard. The applicants have made a reference to letter dated 31.12.1982 to support this point. The respondents have not denied this except stating that the vacancies had arisen on various dates between 1984 to 1990. The respondents also admitted that filling up of the vacancies of Skippers had been held in abeyance on account of proposed merger of the cadre with the Coast Guard. The applicants have stated that the Craft could not be taken on sea without the Skipper being in-charge. The respondents have not denied this. Infact, the respondents have referred to letter dated 27.09.1983 at R-4 of the written statement wherein it is mentioned that pending merger with Coast Guard, the availability of the Craft should not get affected as Skipper Mates are deemed competent to take command of the craft and carry out duties of Skipper in addition to their own, in the absence of Skipper. In the face of this admitted fact by the respondents, it is not understood as to how the respondents maintain that applicants have not worked as Skipper as no representation had been made by them. Admittedly, the applicants are the senior-most in the entire seniority list of Skipper Mates and obviously, they would have been the senior-most at Mumbai. It could be easily inferred, <sup>that</sup> the applicants being the senior-most were certainly asked to work as Skipper to maintain the availability of Craft, as envisaged in letter dated 27.09.1983. Infact, in para 5 of the written statement

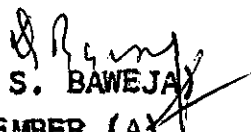
the respondents themselves have stated "it is a fact that Skipper Mates were carrying out the duties of Skippers in addition to their own, in the absence of Skippers." Further, the respondents have not made any averment to the effect that the applicants were not found fit to work as Skippers. In view of this fact and the specific submission of the respondents that Skipper Mates were working as Skippers, we are unable to comprehend the stand taken by the respondents in rejecting the claim of the applicants in seeking the same benefits, as extended to the three applicants in the decided O.As. as referred to above. In the focus of these facts, it is to be held that the applicants were performing the duties of Skippers in addition to their own duties and were similarly placed as Shri K.A.M. Kutty, Shri A Joseph and Shri E. M. Kolekar. Not-extending the benefits allowed to the three applicants under reference, in the decided O.As., would amount to discrimination and violative of Articles 14 and 16 of the Constitution Of India. In this connection, the applicant has relied upon the order of the Tribunal in the case of Shri A. K. Khanna & Others V/s. Union Of India & Others [ ATR 1988 (2) CAT 518 ]. In this order it is held that non-extension of similar benefits to those who were not party would amount to discrimination, violative of Articles 14 and 16 of the Constitution Of India. In the present case, the applicants are similarly situated and non-extension<sup>of</sup> the benefits in their case would amount to discrimination. We are, therefore, in respectful agreement with what is held in the case of

A. K. Khanna. With this position emerging, we are of the view that following the ratio of what is held in the orders in the case of <sup>Shri</sup> K.A.M. Kutty, Shri A. Joseph and Shri E. M. Kolekar, the applicants are entitled for the same benefits of officiating as Skippers on adhoc basis w.e.f. 01.01.1985.

6. As discussed earlier, the applicants did not agitate the matter for seeking the relief till the order in the case of A. Joseph in 1992. Thereafter also, the applicants after submission of the representation in 1993, filed the present O.A. only in 1995. The applicants have also not brought on record any representation which had been made by them with regard to their officiating as Skipper on adhoc basis. In view of these facts, though we have held that the application attracts the provisions of limitation but we are not inclined to reject the claim on this account, on account of <sup>that</sup> anomalous situation/has arisen due to the grant of relief to the juniors. However, the payment of arrears, if any, that would become due on account of granting of the relief to the applicants, will certainly <sup>come</sup> under the limitation and, therefore, the period of payment of arrears will have to be restricted. It is further noted that both the applicants have been promoted as Skippers w.e.f. 23.03.1993 and 24.03.1993 respectively.

7. In the result of the above reasons, the O.A. is allowed with the following directions :

- (i) Both the applicants shall be deemed to officiate as Skippers on adhoc basis w.e.f. 01.01.1985 onwards and their emoluments shall be fixed accordingly in the post of Skipper w.e.f. 01.01.1985 onwards, allowing them the annual increments as due and applicable in the scale of pay of Skipper till the date of their promotion as Skipper.
- (ii) The payment of the arrears that become due in terms of the directions at (i) above, will be restricted to a period of three years earlier to the date of promotion as Skipper in 1993.
- (iii) The compliance of the order shall be done within a period of four months from the date of receipt of this order.
- (iv) No order as to costs.

  
(D. S. BAWEJA)  
MEMBER (A).

  
(R. G. VAIDYANATHA)  
VICE-CHAIRMAN.

15/6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

CONTEMPT PETITION NO. 27 OF 2001

IN

ORIGINAL APPLICATION NO.394 OF 1995

G.D.Shukla ).. Petitioner

Versus

Union of India & Anr. ).. Respondents

And

Dr.G.K.Pillai )


Commissioner of Customs ).. Contemnor

I N D E X

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3.	Copy of Petitioner's letter dated 17.5.1999.	"B"	10
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Advocate for Petitioner

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

CONTEMPT PETITION NO. 27 OF 2001

IN

ORIGINAL APPLICATION NO. 394 OF 1995

G.D. Shukla )  
residing at Flat No. 265, )  
Type IV, Central Govt. )  
Staff Quarters, Wadala (W), )  
Mumbai. ) **Petitioner**

Versus

1. Union of India through )  
the Secretary in the )  
Ministry of Finance, )  
Department of Revenue, )  
New Delhi. )  
2. Collector of Customs )  
New Customs House, )  
Ballard Estate, )  
Bombay 400038 ) **Respondents**

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And

Dr. G.K. Pillai, )

working as Commissioner of Customs(G)

Mumbai Customs House, Mumbai. )

**Contemnor**

**PETITIONER ABOVE NAMED RESPECTFULLY SUBMITS AS FOLLOWS :**

1. Petitioner along with one Shri S.P.Singh, now retired, filed the aforesaid Original Application No.394 of 1995 in this Hon'ble Tribunal seeking the following reliefs:

"To direct the respondents to pay to the applicants the pay and allowances attached to the post of Skipper w.e.f. 01.01.1985 and also allow the annual increments as well as other consequential benefits as allowed to their juniors S/Shri K.A.M. Kutty and A.Joseph."

2. The application was strongly resisted by the Respondents but this Hon'ble Tribunal by its Judgment and Order dated 19.2.1999 was pleased to allow the application and the following directions were issued :

(i) Both the applicants shall be deemed to

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officiate as Skippers on ad hoc basis w.e.f. 01.01.1985 onwards and their emoluments shall be fixed accordingly in the post of Skipper w.e.f. 01.01.1985 onwards allowing them the annual increments as due and applicable in the scale of pay of Skipper till the date of their promotion as Skipper.

(ii) The payment of the arrears that become due in terms of the directions at (i) above, will be restricted to a period of three years earlier to the date of promotion as Skipper in 1993.

(iii) The compliance of the order shall be done within a period of four months from the date of receipt of this order.

3. After the issue of the aforesaid directions the Commissioner of Customs (G) issued Establishment Office Order No. 111/99-P&E dated 22.4.1999 directing that the Applicant and the said Shri S.P.Singh are deemed to be promoted as Skipper on ad hoc basis w.e.f. 01.01.1985 and that they would get the annual increments as due and applicable in the pay scale of Skipper till the date of their promotion as Skipper vide E.O.O.No.124/93-P&E dated 23.4.1993. The said Office Order dated 22.4.1999 further directed that the payment of arrears that becomes due on the basis of promotion w.e.f. 1985 would be restricted to a

period of three years earlier to the date of promotion as Skipper in 1993. Hereto annexed and marked as **Exhibit-A** is a copy of Estt. Office Order No.11/99-P&E dated 22.4.1999.

4. By his letter dated 17th May 1999 addressed to Commissioner of Customs (G), Petitioner expressed gratefulness for issuing Estt. Office Order dated 22.4.1999. In the said letter Petitioner stated that CAT's Judgment however would be deemed to be implemented only after the admissible arrears of pay and allowance are paid within a period of four months from the date of receipt of the said order dated 24.9.1999. Petitioner therefore, requested the Commissioner of Customs to issue Order to the Accounts Department to cause the arrears of pay to be paid on or before 24.6.1999 so that the Hon'ble CAT's Order stood implemented in full within the period specified therein. Hereto annexed and marked as **Exhibit-B** is a copy of Petitioner's letter dated 17.5.1999.

5. Since no action to pay the arrears had been initiated, Petitioner wrote his reminder dated 25.10.1999 in which Petitioner stated that four months period prescribed by this Hon'ble Tribunal ended on 24.6.1999 and that Petitioner had, by his letter dated 17.5.1999, reminded the department for paying the arrears on or before 24.6.1999 and since the same had not been done, a fresh reminder was being given so that the department could make payment and do not compel the Petitioner to initiate contempt proceedings. No

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response has been there to this letter dated 25.10.1999 till date. Annexed hereto and marked as **Exhibit-C** is a copy of the Petitioner's reminder letter dated 25.10.1999.

6. By his letter dated 7th August 2000 Petitioner once again brought to the notice of the Commissioner of Customs (G) that Hon'ble CATs Judgment would be deemed to be implemented in full only after the admissible arrears of pay were paid within a period of four months but the same had not been done in the case of the Petitioner till date; he therefore, once again requested for issue of Orders to the Accounts Department to pay the arrears at the earliest as already about 18 months had elapsed. Petitioner further stated that his earlier request for payment of arrears had fallen on deaf ears of the Accounts Officer of Preventive Pay Bill Section, inspite of clear instructions from the Deputy Commissioner (P&E). Annexed hereto and marked as **Exhibit-D** is a copy of Petitioner's letter dated 7th August, 2000.

7. Petitioner thereafter by his letter dated 27.2.2001 addressed to Commissioner of Customs (G) invited his attention to the Judgment and Order passed by this Hon'ble Tribunal and the Estt. Office Order No.111/99 dated 22.4.1999. Petitioner recorded in the said letter that the said Judgment has been violated by the Accounts Department by not paying the arrears of pay and allowances even after a lapse of over two years inspite of Court's Order for

implementation of the judgment in four months. Petitioner stated that on 17.5.1999 and 7th September, 2000 he had represented this matter and personally approached the concerned personnel in the Accounts Section, Establishment Section & D.C. (P&E) from time to time but to no avail. Petitioner therefore requested the Commissioner Customs (G) to issue strict Orders to the Accounts Department to cause the arrears to be paid to the Petitioner, with interest, w.e.f. 24.6.1999 that is when the four months period for implementation of the Courts order expired. Petitioner stated that he had waited for implementation of the orders but no avail hence he was left with no other option and he would be compelled to approach the Tribunal for contempt of court. Hereto annexed and marked as **Exhibit-E** is a copy of Petitioner's letter dated 27.2.2001 to which also there is no response till date.

8. Petitioner states that this Hon'ble Tribunal will be pleased to note and appreciate that the Respondents were directed to pay the arrears that become due in terms of the directions at (i) of the Order but the same were directed to be restricted for the period of three years since the date of promotion as Skipper in 1993 i.e. from 1990. Till date the Respondents have given no effect to that part of the directions. Petitioner submits that the sum of Rupees over Rs.1.5 lakhs has been withheld by the Respondents to which Petitioner become legally entitled to, in June 1999. Petitioner respectfully submits that the Respondents,

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including the Contemnor herein, have exhibited contumacious conduct and therefore deserve to be suitably punished for the same. Petitioner states that there is no other remedy except to approach this Hon'ble Tribunal in its contempt jurisdiction. Hereto annexed and marked as **Exhibit-F** is a Copy of the Tribunals Order dated 19.2.1999.

Petitioner, therefore, prays :

- (a) That this Hon'ble Tribunal will be pleased to hold that Respondents and Contemnor herein are guilty of contumacious conduct in as much as they have wilfully avoided to implement the directions issued by this Hon'ble Tribunal by its Order dated 19.2.1999 in O.A.No.394 of 1995.
- (b) That this Hon'ble Tribunal will be pleased to suitably punish the Respondents and Contemnor for wilful disobedience of this Hon'ble Tribunal's Orders.
- (c) That in order to partly compensate the Petitioner for deliberate delay, Respondents be directed to pay to the Petitioner forthwith the amount that has become due and payable, to him together with interest thereon at 18% p.a. from 24.6.1999 till

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payment.

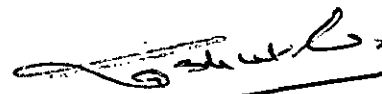
(d) That costs of this Contempt Petition be awarded in favour of the Petitioner

(e) That such other and further Orders as are expedient be issued in favour of the Petitioner; And

I, G.D. Shukla, Petitioner herein, do hereby verify the contents of this Contempt Petition and state that whatever is stated by me in the aforesaid paragraphs of the Contempt Petition are absolutely true and that I have not suppressed anything from this Hon'ble Tribunal.

Verified at Mumbai )

this 18<sup>th</sup> day of April, 2001 )

  
( G. D. Shukla )

  
Advocate for Petitioner