

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOKATA BENCH, KOLKATA
CIRCUIT BENCH AT PORT BLAIR**

O.A./351/00394/2017

Orders Reserved on : 19th June, 2018

Date of orders : 22nd June, 2018

CORAM

HON'BLE MR.S.K.PATTNAIK, MEMBER (J)
HON'BLE DR. NANDITA CHATTERJEE, MEMBER (A)

Shri Rabi Banik, R/o Late Nabadwip Banik, S/o Manglutan Ferrargunj
Tehsil, South Andaman, Posted as Engine Room Rating under the
Respondent No.6

.....Applicant

By Advocate : Mr. G.B. Kumar

Versus

1. The Union of India service through the Secretary, Government of India, Ministry of Home Affairs, North Block, New Delhi – 110 001.
2. The Union of India through the Secretary to the Govt. of India, Ministry of Shipping, Road Transport and Highways, ShastriBhawan, New Delhi - 110001.
3. The Lieutenant Governor, Andaman & Nicobar Islands, Raj Niwas, Port Blair – 744101.
4. The Chief Secretary, Andaman & Nicobar Administration, Secretariat, Port Blair – 744101.
5. The Secretary [Shipping], Andaman & Nicobar Administration, Secretariat, Port Blair – 744101.
6. The Director of Shipping Services, Andaman & Nicobar Administration, Secretariat, Port Blair – 744101.
7. The Deputy Director of Shipping, Andaman & Nicobar Administration, Secretariat, Port Blair – 744101.
8. The Harbour Master, Port Management Board, Port Blair-744101.
9. The Marine Engineer, Under the Director of Shipping Services, Andaman & Nicobar Administration, Secretariat, Port Blair – 744101.
10. Shri Abdul Nisar, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.
11. Shri Zahir Ali, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.
12. Shri M. Chinnaiah, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.
13. Shri G.K. Ghosh, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.

14. Shri KeshabLall, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.
15. Shri M.T. Ummar, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.
16. Shri SajidHussainpresently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.
17. Shri M. Sakthivel, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.
18. Shri Mohd. Rafi, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.
19. Shri ChiranjeevLall, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.
20. Shri K. Sabir, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.
21. Shri Adaikalam, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.
22. Shri P.M.Usman, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.
23. Shri S.D. Moorthy, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.
24. Shri S. Sasi Kumar Pillai, presently working as 2nd Class Engine Driver, under the Directorate of Shipping Services, Afloat Section [Jetty Office], Directorate of Shipping Services, Port Blair -744101.

..... Respondents.

By Advocates: Mr. S.C.Misra

ORDER

Per S.K.Patnaik, Member (J):- The applicant seeks for a direction to the Respondent No.6 to conduct fresh Departmental Promotion Committee to consider the case of the applicant for promotion to the post of Engine Driver 2nd Class and to give retrospective promotion w.e.f. 13th October, 2016 when the juniors were promoted. The applicant also challenges the promotional order no.4721 dated 13th October, 2016 by which the private respondents were promoted.

1.8
N.C. 2016

2. The applicant had made a representation on 28.09.2016 and the Office of Director of Shipping Services had informed him vide letter dated 18th October, 2016 [Annexure-A-11] that his request for promotion will be considered subject to submission of certificate of competency and availability of vacancy at that point of time. The applicant was inducted as Greaser Grade – II on 06.07.1995. The next promotional post is Engine Driver 2nd Class. For promotion to the post of Engine Driver 2nd Class is to be made from amongst Engine Room Rating having completed 11 years of service possessing the certificate of competency of Engine Driver 2nd Class. Further, the applicant having completed 11 years of regular service showed his willingness to undergo training of Engine Driver 2nd Class. The respondent no.6, vide letter dated 27.04.2016, requested the Principal Officer, Mercantile Marine Department, National Island Navigation Institute, Patna for appearing in the competency examination of 2nd Class Engine Driver at Patna. The applicant after obtaining leave from the office, proceeded in the month of July, 2016 to Patna and joined the National Island Navigation Institute under the Ministry of Shipping, Govt. of India for undergoing 2nd Class Engine Driver course. The applicant completed the course which was commenced from 04.07.2016 to 30.07.2016 and after completion of the said course, "Course Completion Certificate" was issued on 30th July, 2016 by the Institute in favour of the applicant [Annexure-A-4]. On 8th August, 2016, an oral test was conducted by the Institution and the applicant successfully passed the oral test. On 10th August, 2016, the applicant sent a fax to Respondent No.6 intimating that he has passed the course of Engine Driver 2nd Class on 08.08.2016. Since there was heavy flood in Patna during August, 2016, the applicant could not receive the certificate of competency from the National Island Navigation Institute.

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Further case of the applicant is that as per seniority list of Engine Room Rating dated 7th June, 2016, the name of the applicant appeared at Sl. No.36, and only two persons, namely Shri Ram Nagraj at Sl. No.25 and Shri Charles at Sl. No.29, who were senior to him, and have completed the said course of Engine Driver 2nd Class but unfortunately their case was also not considered by the Departmental Promotion Committee. The applicant made representation on 28th September, 2016 and 10th October, 2016 and was informed that certificate is awaiting and his candidature shall be considered by the DPC for promotion. Finally, vide order dated 18.10.2016 [Annexure-A-11], the applicant was informed that in the absence of certificate of competency, his name cannot be included for departmental promotion committee and his request for promotion will be considered subject to submission of certificate of competency and availability of vacancy at that point of time. Finally the applicant obtained the certificate of competency [Annexure-A-12] which was issued on 27th October, 2016. According to the applicant, it has been categorically reflected in the certificate that the applicant had passed the examination on 08.08.2016, i.e. much prior to the DPC and in that event his candidature should have been considered by the Departmental Promotion Committee without insisting for issue of a formal certificate by the competent authority.

3. Respondents contested the case by filing a written statement. According to the respondents, the first date of DPC was fixed on 22nd July, 2016 and at that time the applicant was not qualified for promotion as he had only gone for training. Further case of the respondents is that the applicant had an opportunity to file certificate of competency but he failed to do so till 13.10.2016 when the DPC was held for which he was not in the zone of consideration. According to the respondents, the seniority of

as per attachment 1, 2, 3

candidates is to be considered by the date of obtaining of the certificate of competency and not from the date of their appointment and the applicant has to suffer for not undergoing training earlier, which he could have done.

4. The private respondent no.7 contested the case by filing a separate written statement. According to this respondent, the applicant could not furnish the certificate of competency of Engine Driver 2nd Class on 28.10.2016, i.e. on the date of completion of DPC, therefore, his name was rightly omitted from the purview of consideration. Further case of this respondent is that the Director had started the process of promotion w.e.f. 22.01.2016 and since on the date of consideration by the DPC, the applicant was not having the requisite certificate of competency, he could not be considered.

5. Learned counsel for the private respondent no.7 drew our attention to the Inland Vessels Act, 1917 [Annexure-R-4], whereby under Section 59 there is penalty for serving or engaging any person to serve as a master or engineer of an inland without certificate. As per the requirement, the employee shall be punished if the employee without any requisite certificate drives a vessel. So the DPC could not have cleared the name of the applicant without requisite certificate on the date of consideration. There is nothing wrong in the communication dated 18th October, 2016 [Annexure-A-11], wherein the applicant was informed that his case can only be considered on submission of certificate of competency and on the basis of availability of vacancy and on the recommendation of the departmental promotion committee. The promotion order dated 13th October, 2016 [Anenxure-A-9] was issued and admittedly, at that time the applicant was not having the requisite certificate which has been issued by the competent authority, i.e. National Navigation Institute, Patna only on 17th October, 2016 [Annexure-

A-12], i.e. much after holding of DPC.

6. Learned counsel for the applicant argued that since the applicant passed on 8th August, 2016, this should be treated as effective date of eligibility. It may be clarified that passing of examination is the first step in getting the certificate but issuance of certificate is the relevant date of acquiring competency to act as a 2nd Class Engine Driver as per Inland Vessels Act, 1917. The applicant has to blame himself for not undergoing training at the first available opportunity, which his juniors availed and for the delay in issue of the certificate, the present respondents cannot be blamed. Since there is nothing wrong in the impugned order or promotion order, no interference is called for. Hence ordered.

5. The OA being devoid of merit is dismissed. No costs.

[Dr. Nandita Chatterjee]
Member (Admn.)

mps/-

[S.K.Pattnaik]
Member (Judicial)