

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
(CIRCUIT AT PORT BLAIR)**

O.A No. 351/245/2017

Date of Order: 03.06.2019

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. N. Neihisial, Administrative Member

V. G. Elumalai, aged about 49 years, Son of Late V. Govindan
Working to the post of Foreman of Stores Department
Andaman & Nicobar Coast Guard under Commander
Coast Guard Region, Port Blair in the pay scale of
Rs. 9300-34800 with Grade Pay of Rs. 4200 and residing at
CPWD Quarter No. C/12/03, Ranchi Tikkri, Lumbahire
Post Office - Junglighat, Dist - South Andaman
Port Blair - 744103.

---Applicant

Versus

1. Union of India service through the Secretary
Government of India, Ministry of Defence
South Block, New Delhi - 110001.
2. The Director General For SCSO (CP)
Coast Guard Headquarters, National Stadium Complex
New Delhi - 110001.
3. The Commander, for CSO (P&A)
Coast Guard Region (Andaman & Nicobar)
Port Blair - 744103.
4. S.N. Kedare, working to the post of Civilian Gazetted Officer
(Logistics) in the Coast Guard Regional Store Depot
Andaman & Nicobar, Post Office - Haddo
Port Blair - 744102.
5. K.A. Ambati, working to the post of
Civilian Gazetted Officer (Logistics)
In the Coast Guard Regional Store Depot (NE)
Kolkata, Synthesis Park, 6th Floor, Shrachi Building
New Town, Rajarhat, Kolkata - 700161.

----Respondents

For the Applicant: Mr. P.C. Das, Counsel

For the Respondents: Mr. V D S Balan

ORDER (Oral)

Per: Ms. Bidisha Banerjee, Member (I):

The applicant has preferred this O.A. to seek the following reliefs:

- "a) To quash and/or set aside the impugned speaking order dated 11th May, 2016 issued the SCSO (CP) of Director General of Coast Guard Headquarters, National Stadium Complex, New Delhi-110001 by which the claim of the applicant has been rejected on the ground which is not sustainable at all being Annexure A-15 of this Original Application.
- b) To pass an appropriate order directing upon the respondent authority to rectify the Draft Seniority List to the post of Foreman of Stores which was published on 1st July 2013 to the effect that name of the applicant will be placed as Serial No. 1 above the private respondent who got regular appointment to the post of Foreman of stores much before the private respondent.
- c) To quash and/or set aside the impugned order of promotion of the private respondent which was made by the respondent authority on the basis of draft Seniority list vide promotion order dated 6th December, 2013 to the post of Civilian Gazetted Officer (Logistics) on the basis of pre-revised recruitment Rules dated 22nd November, 2006 being Annexure A-5 of this original application.
- d) To quash and/or set aside the impugned office order dated 13th January, 2014 and 26th March, 2014 being Annexure A-7 and A-9 of this original application whereby and whereunder the claim of the present applicant for considering his promotion to the post of the post of Civilian Gazetted Officer (Logistics) has been rejected by applying the new Recruitment Rules dated 11th October, 2013 which is not applicable in the case of the present applicant because of the fact that the DPC in respect of considering the promotion was held on the basis of vacancy arose before amendment Recruitment Rules and on the basis of that promotion of the private respondent has been considered, therefore the applicant's case ought to have been considered on the basis of unamended recruitment rules with effect from the date the private respondent has got the same along with all consequential benefits."

2. The order impugned in the present O.A. dated 11.05.2016 issued by the SCSO (CP) of Director General of Coast Guard Headquarters reads as under:

"TATRAKSHAK MUKHYALAYA

Coast Guard Headquarters

National Stadium Complex

New Delhi - 110 001.

CP/0451/VGE

11 May, 2016

The Commander

(for CSO (P&A))

Coast Guard Region (West)

Mumbai - 400 030

REPRESENTATION SUBMITTED BY SHRI VG ELUMALAI

FOREMAN OF STORES, NO. S/00607

1. Refer to your letter 277/1/579 dated 29 Feb 2016.
2. The representation of Shri VG Elumalai, Foreman of stores submitted in pursuance to the Central Administrative Tribunal, Calcutta Bench Order dated 01 Dec 2015 in the OA No. 351/00069/2014 has been examined. It is observed that the applicant is contesting his seniority vis-à-vis seniority of Shri SN Kedare & Shri KA Ambati whereas the Hon'ble Tribunal has given him the liberty to justify his stance only w.r.t the private respondent in the above OA viz. Shri SN Kedare. In view of this, the same is not considered to be in order.
3. Notwithstanding above, it is stated that the applicant, Shri SN Kedare & Shri KA Ambati joined Coast Guard Service in the post of Asst Store Keeper on 03 Jul 87, 01 Dec 84 and 18 Mar 87 respectively, through separate direct recruitment selection processes in different recruitment years. As per the provisions contained in the DoP&T OM No. 22011/7/86-Estt.(D) dated 03 Jul 1986, persons appointed as a result of an earlier selection will be senior to those

appointed as a result of subsequent selection. Hence, the applicant was junior most amongst the above mentioned 03 persons. Subsequently the applicant and two above named persons were promoted to the post of store Keeper and Foreman of Stores. The promotion to the post of Foreman of Stores in respect of all the said three persons was considered by the same DPC and the promotion order was issued vide CGHQ letter CP/0452 dated 12 Jan 2005. Further, on promotion the applicant was posted to RHQ(A&N) from DHQ-9 and hence he assumed the charge of the post of Foreman of stores on the same date whereas other two persons on promotion were transferred out (from DHQ-2, Mumbai, to ICGS Jakhau and from CGASD Goa to CGS Vizhinjam, respectively) and they could assume the charge of the higher post on later dates. The transfer was effected in the service interest and on administrative grounds. However, the late assumption of charge in the higher post by both the senior persons will have no effect on their seniority as they will continue to remain senior to the applicant as per the provisions contained in the DoP&T OM ibid. The delay in assumption of charge in the interest of the organization cannot put the persons at a disadvantage over their juniors. It is pertinent to mention that the initial regular appointment in the entry grade of Assistant store Keeper in Coast Guard will only be taken into consideration for the purpose of seniority in consonance with the provisions contained in the DoP&T OM ibid. The seniority of a person shall be affected only on imposition of any penalty under the CCS(CCA) Rules, 1965, for refusal to accept promotion or being considered to be unfit by DPC.

4. It may be brought out that prior to conduct of any DPC, a draft seniority list for the relevant post is circulated to the concerned persons for removal of discrepancies, if any. In the instant case also the draft seniority list of foreman of stores was circulated vide CGHQ letter CP/0134/7 dated 01 Jul 2013. RHQ(A&N) has forwarded the draft seniority list with the signature of the persons appended thereon as a token of having seen the seniority list bringing out the discrepancy with regard to his seniority vis-à-vis Shri SN Kedare. Hence, the contention of the applicant, at this belated stage that he could not submit his objection/representation to the said draft seniority list as the last date of submission was over is untenable. Further,

the final seniority list of Foreman of Stores alongwith that of other posts of Store Keeping cadre was promulgated vide CGHQ letter CP/0134/7 dated 02 Aug 13.

5. In view of the above, it is amply clear that the applicant is neither senior to Shri SN Kedare nor Shri KA Ambati, and hence the seniority list promulgated vide CGHQ letter No. CP/0134/7 dated 02 Aug 2013 is proper and not required to be recasted. Accordingly, the question of grant of promotion and its consequential benefits to the applicant prior to Shri SN Kedare, the private respondent does not arise.

6. As per the directives of the Hon'ble CAT, Kolkata, the applicant and the private respondent were also given personal hearing by the competent authority on 25 & 29 Apr 16 wherein they were apprised of the issue regarding their relative seniority, on the same lines as brought out above. Both the individuals appeared to be satisfied with the clarification rendered.

7. In view of the above, the representation of the applicant is rejected being devoid of any substance and merit.

8. It is requested that Shri VG Elumalai, Foreman of Stores, may be informed accordingly."

3. The grievance of the applicant as projected in this O.A. is manifestly two fold. Firstly, that although he was promoted to the post of Foreman of Stores on 12.01.2005 ahead of Sri S.N.Kedare, who joined on 09.03.2005 to the post of Foreman, the DPC granted promotion to Sri S.N.Kedare ignoring the seniority of the applicant, viz. V.G.Elumalai, in Civilian Gazetted Officer (Logistics). Therefore, he should be allowed promotion to CGO (Logistics) on par with Kedare. Secondly, his promotion ought to be in terms of un-amended Recruitment Rules.

4. Ld. Counsel for the applicant, at hearing, would particularly draw our attention to draft seniority list of Foreman of Stores in Coast Guard Organization as on 01.07.2013, which reflects the following position of the applicant vis-à-vis the private Respondent, Sri Kedare,:

Sl. No.	Name of the individual S/Shri	Region	Category SC, ST, OBC, Neither	Date of birth	Ed. Qual.	Date of continuous Govt. service	Date of Regular appt of the present grade
1	2	3	4	5	6	7	8
1	SN Kedare	RHQ(W)	SC	19/08/60	SSC	01.12.84	09.03.05
2	VG Elumalai	RHQ(A&N)	Neither	01/06/65	XII	03.07.87	12.01.05

Ld. Counsel would contend that Elumalai, with a date of appointment earlier to Kedare, has been arbitrarily placed below him.

5. Per contra, Ld. Counsel for the Respondents would submit that DPC considered promotion to the post of CGO(Logistics) against one vacancy and S.N.Kedare and V.G.Elumalai were promoted as Foreman of Stores, feeder post to CGO (Logistics), on the same date, but since S.N.Kedare joined from a subsequent date but was placed in the promotion list ahead of the applicant, the order of promotion was reflected as under in the promotion order dated 12.01.2005:

<u>"S/Shri</u>	<u>From</u>	<u>To</u>
SN Kedare	RHQ-2	RHQ(West/CGS.....
AK Ambati	CGASQ Goa	RHQ(West)/CGS.....
Km Hemlata	CGSD(MB)	RHQ(E)/RSD(Chennai)
Ms Vaishali	RHQ (West)	RHQ(West/CGSD(MB)
VG Elumalai"

Therefore DPC considered Kedare while the applicant was rightly considered in the subsequent promotion and granted seniority w.e.f. the date of his promotion.

6. Ld. Counsel would further contend that the applicant should not be allowed to raise hue and cry over the issue as none of his juniors were promoted to CGO (Logistics), ahead of him. He would further furnish a promotion order dated 05.09.2018, which manifests that the V.G.Elumalai was promoted to the post of CGO(Logistic) in PB-II Rs. 9300-34800/- with Grade Pay Rs. 4600/- against the existing vacancy from the date of issuance of the order and the applicant has been placed at Sl. No.1 of the said list.

7. At this juncture, Ld. Counsel for the applicant would vociferously submit that while holding DPC for one single vacancy in CGO (Logistics) when at least two vacancies were available for consideration, the Respondents have acted in an arbitrary manner to deprive the applicant of his due promotion from the date S.N.Kedare was promoted as such and to show illegal favour to Kedare. He would seek appropriate amelioration of his grievance while antedating the promotion of the applicant on par with S.N.Kedare.

8. At hearing, Ld. Counsel for the Respondents would vehemently oppose the prayer on the ground that since one post in promotion quota was available and S.N.Kedare was evidently senior to V.S.Elumalai, he was rightly granted promotion at the material time.

9. We heard Ld. Counsels for the parties and perused the materials on record.

10. We note that the Respondents are conspicuous by their silence in regard to availability of vacancies of CGO (Logistics) when the DPC met in 2013, to consider both Kedare and Elumalai. If the number of vacancies were more than one, holding DPC for a single vacancy cannot be countenanced in any manner whatsoever. In the event such vacancy was available when the DPC met but it was not notified under available quota, which resulted in the applicant's non-consideration at the material time and consideration from a later date but in terms of modified Recruitment Rules, the applicant would be entitled to get his grievance suitably redressed. Strangely enough, although the Respondents have submitted that only one vacancy was available for filling up through the method of promotion, to justify they have averred that out of six earmarked vacancies, five vacancies were already filled up on the date DPC was convened in 2013. The Recruitment Rules for the post of CGO (Logistics) clearly and evidently manifests that the total number of vacancy of CGO (Logistics) is five. Therefore, despite non-availability of a clear vacancy, how Kedare could be favoured in 2013 is not forthcoming from the materials on record.

11. In the aforesaid backdrop, since the apprehension of the applicant that Kedare was favoured with the promotion prior to change of Recruitment Rules does not seem to be baseless, we dispose of the O.A. with a direction upon the Respondent authorities, particularly Respondent No. 3, i.e. Commander, Coast Guard Region (A&N), to give a personal hearing to the applicant to consider his grievance in accordance with law and to pass a reasoned and speaking order in

regard to his grievance deliberating upon the number of sanctioned post of CGO (Logistics) available in terms of Recruitment Rules that prevailed at the material time, number of vacancies available when DPC met in 2013 and, in the event, the Respondents find that the applicant was entitled to be promoted along with Kedare, to antedate his promotion on par with Kedare by issuing appropriate orders within three months.

12. O.A. accordingly stands disposed of. No costs.

N. Neihisal
Administrative Member

(B.Banerjee)
Judicial Member

RK