

**Central Administrative Tribunal
Madras Bench**

OA/310/01035/2019

Dated the 17th day of June Two Thousand Twenty One

P R E S E N T

Hon'ble Mr.S.N.Terdal, Member(J)

&

Hon'ble Mr.C.V.Sankar, Member(A)

T.K.Krishnakumar,
S/o late T.K.Krishnan,
Deputy Director/Deputy Shipping Master,
MMD, DSEO,
Anchor Gate Building, Rajaji Salai,
Chennai. ..Applicant
By Advocate **M/s.Giridhar & Sai**

Vs.

1. Union of India, rep. by the
Secretary to Government,
M/o Shipping Transport Bhavan,
Government of India,
1, Sansad Marg,
New Delhi 110 001.
2. The Director General of Shipping (Ministry of Shipping),
9th Floor, Beta Building,
i-Think Techno Campus,
Kanjurmarg (East),
Mumbai 400 042.
3. Under Secretary to Government,
Department of Personnel & Training,
North Block, Central Secretariat,
New Delhi,
Delhi 110001.

4. The Secretary,
Union Public Services Commission,
Dholpur House,
Dhahjihan Road,
New Delhi 110069.

5. Assistant Director General of Shipping,
Directorate General of Shipping, Mumbai,
Ministry of Shipping,
Government of India.

..Respondents

By Advocate **Mr.M.Kishore Kumar-SPC (R1,2,3&5)**

ORDER

[Pronounced by Hon'ble Mr.S.N.Terdal, Member(J)]

The relief prayed for in this OA is as follows:-

“(i) to declare the Shipping Seamen's Employment and Seamen's Welfare Officer (Group A & Group B Posts) Recruitment Rules, 1995 (vide order No.SM/DESO/DY SM/DY DSEO/ASM/ADSEO/SWO PER BR dated 30.03.1995) in so far as 'transfer on deputation' is provided as a method of recruitment to fill up the post of Shipping Master is concerned as invalid and unconstitutional;

(ii) to call for records relating to order F.No.PB-18/FIL(1)/2018 dated 18.04.2018 passed by the 2nd respondent and quash the same;

(iii) to call for the records relating to order No.NIL dated 28.12.2015 passed by the 3rd respondent and quash the same;

(iv) to call for records relating to order No.PB-18/FIL(1)/2018 dated 12.06.2019 passed by the 5th respondent and quash the same;

(v) to direct the respondents to consider the applicant for promotion to the post of Shipping Master, by relaxing the recruitment rules, if deemed necessary, with all consequential benefits; and

(vi) to award costs and pass such further and other orders as may be deemed fit and proper and thus render justice.”

2. Heard Mr.Giridhar for the applicant and Mr.M.Kishore Kumar for the respondents. Perused the pleadings and all the documents.

3. At the time of hearing, counsel for the applicant submitted as a response to a specific query of the Bench that he is pressing to only prayer No.(i) of the OA and he

is not pressing any of the other reliefs, namely, relief (ii), (iii), (iv), (v) & (vi). With respect to the relief pressed for by the counsel for the applicant, the relevant facts of the case are that the applicant served in the Indian Navy for 16 years from 1983 to 1999 and retired as Chief Petty Officer and thereafter, he was appointed as Assistant Shipping Master/Assistant Director (ASM/AD) on 17.2.1999 and later on he was promoted as Deputy Shipping Master/Deputy Director (DSM/DD) w.e.f. 30.11.2004. His next avenue of promotion is that of Shipping Master/Director (SM/D) and that there are 4 posts of SM/D and that the mode of recruitment to the said post of SM/D is 50% by promotion, failing which by transfer on deputation and 50% by transfer on deputation. The counsel for the applicant vehemently and strenuously submits that the filling up of the post of SM/D by transfer on deputation is bad in law and as such the said Recruitment Rules (RRs) to that extent should be set aside. According to him, under Section 11 & 12 of the Indian Merchant Shipping Act, 1958, there is a bar for appointing any officer who does not have any experience in shipping to be appointed as SM, because the Shipping Master has to discharge the various functions enumerated in Section 89-217 of the MSM Act, 1958 and the rules made thereunder. He took us through the averments made by the applicant regarding the said grounds which are extracted below:-

“A. The impugned orders are arbitrary and unreasonable and violative of the applicant's rights under Articles 14 and 16 of the Indian Constitution.

B. It is submitted that the applicant is presently discharging the duties of Shipping Master/Director at Chennai Office with effect from

01.06.2015 as per Sections 11 and 12 of Indian Merchant Shipping Act, 1958 without any additional remuneration/enhanced status. The applicant has more than 15 years of service in the feeder post of Deputy Shipping Master/Deputy Director and the regular post of Shipping Master/Director is lying vacant since 2010. The Charge Report issued to the applicant is filed as Annexure A-22. Hence the applicant is duly entitled to regular promotion to the said post of Shipping Master/Director; as such, the impugned orders are liable to be set aside.

C. It is submitted that under Section 11(1) of the Act, the Central Government may by notification establish a shipping office at every port in India in which it thinks it is necessary to do so, and shall appoint thereto a shipping master and as many deputy shipping masters and assistant shipping masters as it may consider necessary. Sub Section (3) provides that at any port where no separate shipping office is established, the business of the shipping office shall be conducted at the custom house or the office of the port officer or such other office as the Central Government may specify. Hence, the Act prohibits officials from other Departments from discharging the duties and functions of a shipping office, other than the exception carved out under Sub section (3). It is well established that what cannot be done directly cannot be done indirectly. Hence the provision for 50% of the posts to be filled up by transfer on deputation in Clause 11 of the Schedule to the Recruitment Rules pertaining to post of Shipping Master and corresponding eligibility criteria for deputationists set out in Clause 12 are invalid as they are violative of the provisions of the Act.

D. It is submitted that under Section 12 of the Act, the Central Government may, by notification in the Official Gazette, establish at

every port of India in which it thinks it necessary so to do, a seamen's employment office and shall appoint thereto a Director and a many Deputy Directors and Assistant Directors as it may consider necessary; the Directors, Deputy Directors and Assistant Directors shall exercise their powers and discharge their duties subject to the general control of the Central Government or of any intermediate authority which the Central Government may specify in this behalf; all acts done by or before a Deputy or Assistant Director shall have the same effect as if done by or before a Director for the purposes of this Act; that the Central Government may, by notification in the Official Gazette, direct that at any port at which no separate seamen's employment office is established, the functions of the seamen's employment office in that port shall be discharged by such person or body of persons as it may specify in the notification, and thereupon the office of the person or body of persons so specified shall be deemed to be the Seamen's Employment Office established at that port for the purposes of this Act. Hence, the Act prohibits officials from other Departments from discharging the duties and functions of a Seamen's Employment Office, other than the exception carved out under Sub section (4) of Section 12 thereof. Thus, the provision for 50% of the posts to be filled up by transfer on deputation as per the Recruitment Rules are invalid as they are violative of the provisions of the Act.

E. It is submitted that Article 309 of the Indian Constitution (Annexure A-23) stipulates as follows: *“Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State;*

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.”

F. It is submitted that the conditions of service/specialised duties of Shipping Masters appointed is set out under section 89 to 217 of the Merchant Shipping Act, 1958 (Annexure A-24). Further various rules framed under the Act listed below prescribe the duties/responsibilities for Shipping Master/Director, which can only be performed by personnel with expertise and experience as contemplated under the Act and Rules in the interest of shipping security and safety, which is paramount. They are as follows:

- a) Merchant Shipping (Continuous Discharge Certificate) Rules 2017 **(Annexure A-25)**.
- b) Merchant Shipping (Seafarer's Bio-metric Identity Document) Rules 2016 **(Annexure A-26)**.
- c) Merchant Shipping (Apprenticeship to Sea Service) Rules 1960 **(Annexure A-27)**.
- d) Merchant Shipping (Maritime Labour) Rules 2016 **(Annexure A-28)**.
- e) Merchant Shipping (Recruitment and Placement of Seafarers) Rules, 2016 **(Annexure A-29)**.

The articles published in the authorised website pertaining to functions of Shipping Officers is filed as **(Annexure A-30)**.

Thus, a perusal of the Act and Rules would reveal that detailed provisions are made with respect to the post of Shipping Master/Director in the Merchant Shipping Act 1958 in the interest of shipping security and safety. Hence the Recruitment Rules framed are violative of the provisions of the Act and Rules.

G. It is submitted that the Recruitment Rules in so far as they provide for filling up 50% of the posts of Shipping Master by deputation are ultra vires Article 14 and 16 of the Constitution. It is submitted that the post bears several statutory functions and responsibilities, including quasi-judicial powers under the provisions of the Merchant Shipping Act, 1958, which cannot be competently discharged without prior experience in the lower posts of Deputy and Assistant Shipping Masters. It requires specialised experience and knowledge. The framers of the Rules have been totally oblivious to the requirement and the peculiar features of the post in terms of the profile of the post of Shipping Master under the Merchant Shipping Act. Hence the said Rules are liable to be declared unconstitutional.”

The counsel for the applicant, in support of his above grounds, relied upon the judgment of the Hon'ble Supreme Court in the case of **“Civil Appeal Nos.1115-1118(N) of 1970 (State of Mysore & Ors. v. R.Basappa & Ors., C.A.Nos.3702-03 of 1990 (A.B.Krishna & Ors. vs. The State of Karnataka & Ors.), WP Nos.630-32 of 1984 (T.R.Kapur & Ors. vs. State of Haryana & Ors., Civil Appeal Nos.6549 of 1999 and 963-64, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975 and 976-77 of 2000 (State of U.P. & Ors. vs. Johri Mal).”**

4. The counsel for the respondents equally, vehemently and strenuously submitted that the appointment to the post of SM in the RR, by way of deputation for 50% of the posts and also for promotion, failing which by deputation, has been provided after examination of various duties performed by the SM under various applicable provisions of law and also after the approval of the concerned Ministry as well as the Ministry of Law and also as per the applicable guidelines and OMs of the Department of Personnel & Training and that there is no illegality or arbitrariness or unreasonableness or unconstitutionality in the said RRs. He further submits that the law laid down by the Hon'ble Supreme Court in the above said judgment referred to by the counsel for the applicant is not applicable to the facts of this case.

5. From the perusal of the RRs, it is clear that these RRs are issued by the concerned Shipping Wing of the Ministry of Surface Transport. From the perusal of the eligible conditions for the various posts of SM/D, DSM.DD, Seamen's Welfare Officer, ASM/AD, it is clear that the essential qualification prescribed is that of a Degree from a recognised University or equivalent alongwith some years of experience in administration and establishment matters and only by way of desirable qualification, Degree of Law and knowledge of Merchant Shipping Laws and working knowledge of Hindi are mentioned. Even in the case of SM/D for transfer on deputation, the qualification required is that of holding analogous posts on regular basis with certain years of regular service in a specified pay scale and possessing Degree from a recognised University or equivalent with certain years of experience in supervisory capacity. It further states very clearly that the departmental officer like

that of the applicant in the feeder category who are in the direct line of promotion was not to be eligible for consideration for appointment on deputation. And that, similarly, deputationists shall not be eligible for consideration for appointment by promotion.

6. In view of the above said clear provisions enumerated in the RRs and in view of the submissions made by the counsel for the respondents that these RRs are as per the guidelines of the DOPT and as they have been framed after consultation with the Ministry of Law and the concerned Ministry, we are of the view that there is no illegality or arbitrariness, unconstitutionality with respect of the filling up of the post of SM by deputation. The law laid down by the Hon'ble Supreme Court in the above referred cases by the learned counsel for the applicant are also not applicable in the facts and circumstances of this case. Hence, this OA is devoid of merits and accordingly, the OA is dismissed. No costs.

(C.V.Sankar)
Member(A)

(S.N.Terdal)
Member(J)

17.06.2021

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