

CENTRAL ADMINISTRATIVE TRIBUNAL
 ERNAKULAM BENCH
O.A. NO.418/2011

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Dated this the ¹¹ _{th} day of November, 2011

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Madhu V.A, S/o V.K.Appukuttan, Veliparambil House,
 Netoor P.O, Maradu, Ernakulam - 682040.

(Mr.Lal K. Joseph, Advocate) ...Applicants

Vs.

- 1 The Flag Officer, Commanding-in-Chief (For CSOP&A)
 Head Quarters, Southern Naval Command, Kochi-682004.
- 2 Commodore Superintendent, Personnel & Administration
 Southern Naval Command, Kochi-682004.
- 3 The Chief Staff Officer (Civilian Personnel)
 Southern Naval Command, Kochi-682004.
- 4 Prathapan M.P, Mothirappally House, Nettor PO -682040/

(By Advocates Mr Sunil Jacob Jose, SCGSC R1-3 &
 M/s Ramkumar Associates for R-4) ...Respondents

The application having been heard on 3.11.2011 and the Tribunal
 held as under:

ORDER

HON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is the son of late V.A.Appukuttan, ex-MCM (Welder) who expired in service on 22.8.2005. He had applied for compassionate appointment under employment assistance Scheme but could not be appointed due to lack of vacancies. In response to an advertisement published by the respondents for the post of Lasker Class-I, the applicant

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applied for the same and attended the written examination, swimming test, trade test, medical fitness test and personal verification. The applicant successfully passed all the tests. While the selection process was in progress the respondents issued CS 2809/213 dated 23.4.2010 rejecting the proposal for providing compassionate appointment to the applicant. On 17.8.2010, the applicant received his selection letter as Lasker Class-I and advised him to get the medical examination done and clearance certificate from the local police station. Accordingly he got all the requirements completed within a week time and waited for the appointment order. Thereafter nothing was heard from the respondents, he wrote a letter on 13.11.2010 followed by reminder dated 9.12.2010. In response to his letter, the respondents replied on 4.2.2011 stating that he is not considered for appointment as he was selected from the reserve list. It is submitted by the applicant that he has qualified for the post of Lascar I Class and the vacancies occurred pending recruitment process therefore he was considered for appointment from reserve list being the qualified person. It is alleged that the denial of the applicant for appointment after completion of the employment formalities is illegal.

2 The official respondents contested the O.A by filing their reply. In their reply it is stated that the applicant figured at Sl.No.2 in the reserve list after short listing 11 candidates for appointment of 11 vacancies notified. One candidate in the select list of 11 was found ineligible and therefore the first candidate in the reserve list was selected. The applicant became the first candidate in the reserve list. Meanwhile 8 more vacancies of Lascar I Class arose and in view of the urgent requirement it was decided to fill up one vacancy from the reserve list as per practice. Accordingly the applicant was intimated about his provisional selection and asked to complete the formalities pre-requisite for considering appointment. During this process the respondent noticed the judgment of the Hon'ble Supreme Court in the case of Rakhi Ray & Ors Vs. High Court of Delhi & Ors and Navin

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Kumar Jha Vs. Lieutenant Governor & Ors, wherein it was held that "any appointment made beyond the number advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus a nullity, inexcusable and unenforceable in law. In case the vacancies notified stand filled up, the process of selection comes to an end. Waiting list cannot be used as a reservoir to fill up vacancy which comes into existence after the issuance of notification".

3 The applicant sought information under RTI Act, regarding details of persons who were appointed to various posts from the reserve list after 2008. The applicant filed this information as Annx.A10 in MA No.819/2011.

4 Heard the learned counsel for the parties and perused the record.

5 The short issue that comes up for consideration in this O.A is whether the action of the respondents in denying provisional selection to the applicant on the basis of the judgment of the Hon'ble Supreme Court is valid and in accordance with law.

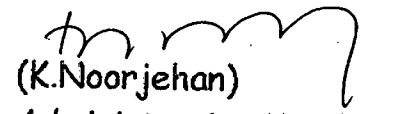
6 I find that in the instant case 11 vacancies were notified for filling up and all the 11 vacancies have been filled up by issuing appointment orders. The applicant was considered for appointment against vacancies which occurred in the same year after issuance of notification. It is submitted by the respondents that the judgment of the Hon'ble Supreme Court (supra) came to their notice only after issuance of the provisional selection letter, Annx.A4, therefore, there was no alternative except to stop the process of appointment and the applicant was informed accordingly. The fact remains, as seen from Annx.A10 that the respondents were in the habit of filling up vacancies which arose in the same year after the notification from the reserve list, on the plea of urgent requirement till 2009. The applicant therefore had a strong case of legitimate expectation. However, the Hon'ble Supreme Court has specifically held that vacancies cannot be filled up over and above the number of notified vacancies as the recruitment of the candidates in excess of notification is a denial and deprivation of the

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constitutional right under Articles 14 and 16 of the Constitution. As regards appointment on compassionate ground is concerned, the case of the applicant was considered thrice on merits as per the bench marks prescribed. His case could not be considered as there were more deserving cases and number of vacancies was meagre. The applicant accepted the same without any demur.

7 In view of the above, I am of the considered opinion that the action of the respondents cannot be faulted for not appointing the applicant by acting on the reserved list after filling up notified vacancies in violation of the judgment of the Hon'ble Supreme Court. I, therefore, dismiss the OA. No costs.

Dated the 11th November 2011.


(K. Noorjehan)
Administrative Member.

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