

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. ~~XXXXXX~~ 429/91 199

DATE OF DECISION 24.8.92

Francis P. Sebastian and another Applicant (s)

Mr. P.S. Biju Advocate for the Applicant (s)

Versus

Union of India represented by
~~the Flag Officer Commanding in~~ Respondent (s)
Chief, Southern Naval Command,
Cochin-4 and four others.

Mr. N. N. Sugunapalan, SCGSC Advocate for the Respondent (s)
Mr. K. Ramakumar

CORAM :

The Hon'ble Mr. **S. P. MUKERJI, VICE CHAIRMAN**

The Hon'ble Mr. **A. V. HARIDASAN, JUDICIAL MEMBER**

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*
4. To be circulated to all Benches of the Tribunal? *N*

JUDGEMENT

(Hon'ble Shri S. P. Mukerji, Vice Chairman)

In this application dated 15th March 1991 the two applicants who have been working as Plater (SK) in the Naval Ship Repair Yard, Cochin under the Southern Naval Command have challenged the Seniority List published along with the communication dated 13.9.1990 at Annexure A.2 and have prayed that the respondents be directed to rank them above respondents 3, 4 and 5 who have been shown above them in the impugned Seniority List.

2. The applicants passed the I.T.I in Sheet Metal Work and completed the Apprentice Training in the Naval Ship Repair Yard from 1984 to 1986 and passed the Apprentice Test in 1986. For regular appointment to the post of Plater (SK) in accordance with the Recruitment Rules (Annexure A.1) the ex-Naval Apprentices like them have the first preference, failing which the posts are

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to be filled by promotion and failing that by transfer and failing both by direct recruitment and failing all by transfer on deputation/re-employment of ex-servicemen. Both the applicants and respondents 3, 4, and 5 were regularly absorbed as Plater (SK) with effect from 26.6.87 but since respondents 3, 4 and 5 were not ex-Naval Apprentices the applicants ^{claim that they} are entitled to be appointed first in the order of preference in the Recruitment Rules and should ^{be} ~~have~~ ranked above them. However, in the impugned Seniority List at Annexure A.2, respondents 3, 4 and 5 are ranked at Sl.Nos. 1, 2 and 3 while the applicants have been placed below them at Sl.Nos. 4 and 5. Representations were submitted by the applicants on 25.9.90 at Annexure A.3 but the same was rejected on 27.2.91 at Annexure A.4 which has led them to move this Tribunal.

3. In the counter affidavit the respondents 1 and 2 have stated that as direct recruits the relative seniority of the applicants and respondents 3, 4 and 5 has to be determined by the order of merit and persons appointed as a result of an earlier selection have to be senior to those appointed as a result of the subsequent selection. Respondents 3, 4 and 5 having been nominated by the Employment Exchange were appointed on a casual basis with effect from various dates during 1982-83 whereas the applicants were appointed likewise during 1987. They have conceded that Apprenticeship in the Naval Ship Repair Yard in the trade of Plater which is a non-designated trade is meant for the requirement of the Navy and accordingly, the applicants are ex-Naval Apprentices. When there was a requirement

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of Platers (SK) during 1982-83 and sufficient number of ex-Naval Apprentices were not available, the Employment Exchange was requested to sponsor candidates and out of such candidates respondents 3, 4 and 5 were appointed against short-term vacancies in the Naval Ship Repair Yard during November 1982 and April 1983. In the absence of Government sanction for regular vacancies they were continued as short-term appointees. When vacancies were available in January 1987 and ex-Naval Apprentices were available, the applicants and respondents 3, 4 and 5 were regularly appointed. The applicants were appointed initially against short-term vacancies from 30th January 1987. Since respondents 3, 4 and 5 were selected on 8th November 1982 (Annexure-R3) and the applicants were selected on 30th January 1987 (Annexure R4) ^{according to respondents (1) and (2),} the former have to be senior to the applicants. The representations submitted by the applicants in 1990 were disposed of vide the communications dated 14.11.90 and 19.11.90 at Annexures R5 and R6. Their further representations dated 16th January 1991 were disposed of by the communication dated 27th February 1991 at Annexure A4. Since during 1982-83 neither Naval Apprentices nor candidates for promotion or transfer were available, the Employment Exchange was requested to sponsor candidates and respondents 3 to 5 were selected on a casual basis.

4. In their counter affidavit respondents 3 to 5 have contended that the applicants are not ex-Naval Apprentices but are direct recruits like the respondents.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully.

A more or less similar case arose in O.A.436/90 which was disposed of by this very Bench by our judgment dated 31.1.1991. In that case the applicants^{therein} had also completed Apprenticeship training in the Naval Ship Repair Yard in the non-designated trade of Radio Radar Technician Course . They completed the Apprenticeship training successfully on 31.8.1988. In 1987 when the applicants therein were undergoing the training, respondents 4 to 10 in that application were engaged on a casual basis in the same trade because of lack of trained Naval Apprentices. When regular vacancies arose, respondents 4 to 10 were appointed on a regular basis while the applicants were engaged on a casual basis from 1989 onwards. In that application also the status of the applicants as ex-Naval Apprentices was disputed and the regular appointments of respondents 4 to 10 against vacancies which arose after the applicants had completed the Apprenticeship course was justified on the ground that ^(respondents 4 to 10) they have been in casual employment earlier than the applicants^{therein} in that application. This Tribunal in that case found that in accordance with the Navy's own contention , the applicants being non-designated ex-Naval Apprentices trained in a Naval unit, they have to be treated as ex-Naval Apprentices even though they could not be immediately absorbed in the Naval units. On the question of competitive claims between the applicants in that case who were ex-Naval Apprentices and respondents 4 to 10^{therein}, who were engaged through the Employment Exchange on a casual basis and had not been trained in Naval establishments, this Bench observed as

follows:-


"It is a common case that at a time when the respondents 4 to 10 were initially engaged on casual basis, the applicants were undergoing training and that they had not become qualified for absorption as Tradesmen(SK). In making casual engagement, the provisions of Recruitment Rules cannot be and need not be adhered to. But the position is different when it comes to the question of filling the vacancies on a regular basis. When vacancies are filled on a regular basis, the Recruitment Rules have to be strictly adhered to. At the time when the respondents 4 to 10 were appointed to the regular post, admittedly, the applicants had successfully completed their Apprenticeship Training. So at a time when the regular vacancies were filled, admittedly, the applicants were qualified and belonged to the category of first choice to be preferred for appointment. The contention of the respondents 1 to 3 that as per the practice, those casual labourers engaged earlier were absorbed towards the vacancies which arose on regular basis in preference to the trained Apprentices cannot stand in view of the provision in the Recruitment Rules that the first choice will be ex-Navy Apprentices. Therefore, the contention of the respondents justifying the regular appointment of respondents 4 to 10 has only to be rejected."


6. The applicants in the present case before us had completed the Apprenticeship in a non-designated trade in the Naval Ship Repair Yard. Respondents 1 and 2 have specifically conceded in para 4 of the counter affidavit that Apprentices trained in the Naval Ship Repair Yard, Cochin "in non-designated trades are treated as Ex-Naval Apprentices". They further observed that the "applicants completed their apprentices training in the trade of Plater in Naval Ship Repair Yard, Cochin in October 1986. Apprenticeship in the trade of Plater is covered under the non-designated trade". It is, thus, clear that respondents 1 and 2 have

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accepted that the applicants are ex-Naval Apprentices. Since the applicants as also respondents 3 to 5 having been appointed as casual employees from different dates, were regularised against regular vacancies with effect from 26.6.87 when posts were available, in accordance with the view taken by us in O.A.436/90, as quoted above, the applicants as ex-Naval Apprentices have prior claim on these vacancies than that of respondents 3 to 5 who are not ex-Naval apprentices. Following the same ratio, therefore, the applicants will be senior to the respondents 3 to 5 even with the same date of regularisation.

7. In the circumstances we allow the application with the direction that in the Seniority List of Plater(SK) as on 30th August 1990 attached with the impugned communication dated 13th September 1990 at Annexure A2, the applicants Shri Francis P. Sebastin and Shri Suresh Babu, who are at Sl.Nos.4 and 5 should be placed at Sl.Nos. 1 and 2 and respondents 3,4 and 5 who have been shown at Sl.Nos.1, 2 and 3 in the Seniority List should be placed at Sl.Nos. 3,4 and 5 therein. There will be no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

n.j.j