

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 436 of 1990
T.A. No.

DATE OF DECISION 31-1-1991

Sabu N George & 3 others Applicant (s)

M/s PS Biju & CS Ramanathan Advocate for the Applicant (s)

Versus

Flag Officer Commanding in Respondent (s)
Chief, Southern Naval Command, Cochin & 9 others

Mr V Ajith Narayanan, ACGSC Advocate for the Respondent (s) 1 to 3
M/s Parameswaran & NN Girija -do- 4 to 10

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV 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? *NO*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicants who are ITC Certificate holders in Radio and Television issued after two year course by the National Council for Vocational Training who have successfully completed apprenticeship training in Naval Ship Repairing Yard on 31.3.1988 have filed this application under Section 19 of the Administrative Tribunals Act, praying that the appointment of respondents 4 to 10 as Radio Mechanics(SK) may be set aside and that the respondents 1 to 3 may be directed to appoint them to the post of Radio Mechanics(SK) which arose after 31.3.1988 on which date they successfully completed the training on the basis of their seniority and that they may be given all

..2...

consequential reliefs. The facts of the case as averred in the application can be briefly stated as follows.

2. The Naval Ship Repairing Yard is conducting training courses in various xxxxxxxx trades some of which are termed as designated trades and others non-designated trades. The number of trainees selected to various trades during a particular year depends on the vacancy position and only such number of candidates as are necessary to be absorbed in the organisation alone are selected and trained. Till 1987 all the trainees who came out successful in the apprentice training were absorbed immediately on completion of the training. The applicants belong to the 1987 batch of Radio Radar Technician Course, conducted by the Naval Ship Repairing Yard Apprentice Training School, Naval Base, Cochin. They completed the apprentice training successfully on 31.8.1988. The applicants after successful completion of their training were registered with the first respondent, the Flag Officer Command in Chief, Southern Naval Command, Cochin. According to the Naval Headquarters letter CP(SC)/2889 dated 30.9.1981, when trained apprentices are available for appointment they alone should be considered for appointment towards the regular vacancies. In 1987 when the applicants were undergoing training, respondents 4 to 10 were engaged in INS Dronacharya as casual employees. After the successful completion of the training by the applicants on 31.8.1988 regular vacancies ~~arose~~ in the post of Radio Mechanics(SK) arose under the second respondent. Though according to the guidelines and instructions

issued by the Government of India when trained apprentices are available they alone should be considered for absorption in regular vacancies, ignoring these guidelines, the respondents filled the regular vacancies which arose after the completion of the training by the applicants by illegally appointing respondents 4 to 10 in those vacancies. The applicants were engaged on casual basis from 15.5.1989 to 30.6.1989 and from 18.12.1989 to 19.4.1990 and are remaining unemployed thereafter. The action of the respondents in filling the regular vacancies which arose after the completion of the training by the applicants by appointing respondents 4 to 10 who had not undergone training under the third respondent is illegal and unjust. Therefore the applicants pray that the appointment of respondents 4 to 10 may be set aside and the respondents be directed to appoint the applicants in the vacancies of Radio Mechanics(SK) which arose after 31.8.1988 the date on which they completed their training with due seniority and that they may be granted the consequential benefits.

3. The first respondent filed a reply statement on behalf of the respondents 1 to 3. The respondents 4 to 10 ^{have} also /filed a joint reply statement. The contentions raised in these two statements are similar. The claim in the application is resisted on the ground that as per ^{the} terms of the agreement by which the applicants were inducted into the training course, there was no obligation on the part of the respondents 1 to 3 to provide employment to them xxxxxxxxx on completion of the

training and that therefore the claim of the applicants^s that they alone should be appointed has no legitimate basis. It has also been contended that though the Recruitment Rules at Annexure-R2 provide that the method of recruitment of Tradesmen Skilled should be by absorption of ~~ex~~-Naval Apprentices failing which 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, as the term ~~ex~~-Naval Apprentice has been clarified to be Apprentices Trained for Navy's requirement and as the applicants were not Apprentices Trained for Navy's requirement, the respondents are not bound to give employment to the Apprentices Trained in the Naval Ship Repairing Yard like the applicants as per the Recruitment Rules. However, it has been conceded in the reply statements that as the apprentices were trained in Naval Ship Repairing Yard, they are found more suitable for requirement of the yard and that the respondents are providing them job as and when vacancies^s arise, giving them first preference. The appointment of respondents 4 to 10 in regular vacancies is justified on the ground that at the time when they were first engaged on casual basis, there were no Trained Apprentices because the applicants were undergoing training and that as the applicants are lower down in rank than the respondents 4 to 10 in the seniority list of casual employees, they cannot challenge the earlier absorption of the respondents 4 to 10. It has been stated that the applicants also would be accommodated in future vacancies as and when vacancies arise.

4. We have heard the arguments of the learned counsel on either side and have also carefully perused the documents produced. Annexure-R2 is a photo copy of the rules regarding recruitment to the post of Tradesmen Skilled(SRO) 338(S1.3) dated 19.11.1979 as amended vide SROs 131/84, 25/87 and 200/89. Column 11 of this reads as follows:

"Method of recruitment whether by direct recruitment or by promotion or by deputation or transfer and percentage of the vacancies to be filled by various methods	: Absorption of Ex-Naval Apprentices failing which 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."
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It is evident from the above SRO that the method of recruitment of Tradesman(SK) grade is first by the absorption of trained Ex-Naval Apprentices. That the applicants have successfully completed the Apprentices Training conducted by the third respondent is a fact admitted. It is contended in the reply statement that in clarificatory notes dated 30.9.1981 at Annexure-R3 the term "ex-Naval Apprentice" used in SRO 338/79 has been clarified to mean Apprentices Trained for Navy's requirement and that as the Apprentices Trained in Naval Ship Repairing Yard are not for Navy's requirement, the applicants have no legitimate claim to claim the first chance for recruitment under the Recruitment Rules. Annexure-R3 a letter written by order of Chief of the Naval Staff in reply to a letter by the Flag Officer Commanding-in-Chief, Southern

Naval Command, Cochin reads as follows:

"I am directed to refer to the correspondence resting with Naval Headquarters letter CP(SC)/2889 dated 22 Jul 78 and to clarify that the term "ex-naval apprentice" Navy's requirement. In other words this term refer to 'non-designated ex-apprentices'."

Annexure-R2 Recruitment Rules is one as amended by SRO 200/89.

It is nowhere stated in Annexure-R3 that ex-Naval Apprentices mentioned in this letter refers to the term ex-Naval Apprentices in the SRO 338 dated 19.11.1979. Further, from Annexure-R3 itself it is clear that ex-Naval Apprentices^{are} in other words referred to^{as} non-designated ex-Apprentices.^{As} the applicants were non-designated ex-Apprentices, the contention of the respondents that as the training was imparted to more candidates than required for immediate absorption in the Navy all those who have undergone training cannot be termed as ex-Naval Apprentices does not stand to reason at all. Annexure-R1 is the Government of India Ministry of Defence letter dated 21.11.1986 addressed to the Chief of Naval Staff on the subject of implementation of Apprentices Act 1961, Dockyard Apprentice Schools at Bombay, Vizag and Cochin. Paragraph 1^{to} Appendix A2 to this letter reads follows:

"General

1. The aim is to train and provide a steady rate of skilled tradesmen required for employment in the Naval Dockyards and other Repair Organisations of Indian Navy and to meet the increasing demand of such personnel in the country. The training will be imparted in accordance with 'The Apprentices Act 1961' and the Rules framed thereunder."

It is obvious from the above extracted declaration of aim that the training was intended to train and provide a steady rate of skilled tradesmen required for employment in the Naval Dockyards

and other Repair Organisations of Indian Navy and to meet the increasing demands of such personnel in the country.

In the face of this declaration of the aim of the apprenticeship training, it is idle to contend that the applicants trained under this scheme in the third respondent's

Training School were not apprentices trained for the requirement of the Navy. Therefore that contention has only to be rejected. The respondents 1 to 3 themselves have in page 3 of the reply statement stated as follows:

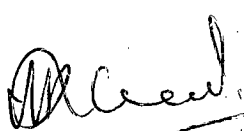
"....However, in case vacancy arises under the Navy under Southern Naval Command in any trade and suitable trained apprentices are available in that trade, such apprentices are appointed in such posts."

Though the respondents 1 to 3 have stated that the applicants also will be provided further employment on casual basis and regular absorption in service, it is contended that ^{as} they are junior in the gradation list of casual employees, they cannot challenge the appointment of the respondents 4 to 10 and that they have to wait for their turn for re-engagement and for regular absorption. The learned counsel for the applicant inviting our attention to the Recruitment Rules submitted that the appointment of respondents 4 to 10 to the regular post of Tradesmen(SK) towards the vacancies which arose after 31.8.1988 when the applicants had successfully completed their Apprenticeship Training is illegal and opposed to in the Recruitment Rules at Annexure-R2 and that therefore the applicants are entitled to have the appointment of the respondents 4 to 10 to regular post set aside and to be appointed in those

posts in preference to any other candidates. Meeting this argument, the learned counsel for the respondents submitted that the respondents 4 to 10 were first engaged on casual basis as there were 16 short-term vacancies to be filled during the period between August 1987 and June 1988 and that when regular vacancies arose, they were entitled to be absorbed first and that the applicants cannot challenge their absorption because in the gradation list of the casual employees, the respondents 4 to 10 were senior to the applicants. He also argued that since during 1987 August and June 1988 ~~as~~ there was no Trained Apprentices, the first choice as per the Recruitment Rules could not be resorted to and there was no illegality in resorting to direct recruitment. [✓] 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.

5. In the conspectus of facts and circumstances, we allow the application and quash the appointment of respondents 4 to 10 in preference to the applicants and we direct the respondents 1 to 3 to appoint the applicants to the regular posts, if they are not otherwise unsuitable and then only to resort to the appointment of other persons as per the Recruitment Rules and to adjust their seniority accordingly. We direct that action on the above lines should be completed within a period of two months from the date of communication of this order. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER

31.1.91


(SP MUKERJI)
VICE CHAIRMAN

31.1.91

31-1-1991

trs

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

RA-20 of 1991 in

O. A. No. 436 of 1990 199

T. A. No.

DATE OF DECISION 31-5-1991

Flag Officer Commanding-in- Chief & 2 others Review Applicant (s)

Mr. Ajith Narayanan, ACGSC Advocate for the Applicant (s)

Versus

Sabu N George & 10 others Respondent (s)

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

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

JUDGEMENT

AV Haridasan, Judicial Member

In this review application the review applicants are challenging the correctness of our decision on merits which is not permissible in a proceedings of this nature. The averment that our decision in the order in the O.A. is in conflict with the order in OA-127/89 and is against the dictum of the decision of the Supreme Court in AIR 1989 SC, 278 is not correct. There is absolutely no conflict at all. The review application is highly misconceived. Hence the review application is rejected.

(AV HARIDASAN)
JUDICIAL MEMBER

(SP MUKERJI)
VICE CHAIRMAN

31-5-1991

trs

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

CPC NO. 267/94 in O.A. 436/90

Thursday, this the 23rd February, 1995

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. S. P. BISWAS, ADMINISTRATIVE MEMBER

1. Sabu N. George
Neduparambil House,
Puthuvypu

2. K. X. Maria,
Kuzhuvelil House
Thammanam

Petitioners

By Advocate Mr. T. A. Rajan

vs.

1. Vice Admiral Mr. Indrajith Bedi
Flag Officer Commanding-in-Chief
Headquarters, Southern Naval Command
Kochi-4

2. Commodore Rajan Mathew
Officer in Charge
Naval Ship Repairing Yard,
Naval Base, Kochi

3. Lieutenant Commander P.J. Joseph
Officer in Charge
Apprentice Training School,
Naval Base, Kochi

Respondents

By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC

O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN

The directions in Original Application No. 436/90 have been substantially complied with and there is no justification for proceeding with the Contempt Petition. If petitioners seek other reliefs, they may do so outside the Contempt Petition. Petition is dismissed. No costs.

Dated the 23rd February, 1995.


S. P. BISWAS
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

Kmn 23295

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

C.P.(C).No. 267 of 1994
in

O.A.No. 436 of 1990

Sabu N. George & another : Petitioners

-Vs-

Flag Officer Commanding-in-Chief
and others : Respondents

I N D E X

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Enclosures - 3

Affidavit

Reply Statement filed by the Respondent

ANNEXURE R-1 True copy of Notice No
CS 2695/43/149 dt 09-12-94 issued by
the Chief Staff Officer(P&A) to Kum Usha

ANNEXURE R-2 True copy of Notice No
CS 2695/43/149 dt 9-12-94 issued by
Chief Staff Officer (P&A) to
K.G. Gopakumar

ANNEXURE R-3 True copy of Notice No
CS 2695/43/149 dt 9-12-94 issued by
Chief Staff Officer (P&A) to
Saphia Beevi

ANNEXURE R-4 True copy of Notice No
CS 2695/43/149 dt 9-12-94 issued by
Chief Staff Officer to Samuel Koshy

ANNEXURE R-5 True copy of Notice No
CS 2695/43/149 dt 9-12-94 issued by
Chief Staff Officer to
C Poornachandrakumar

ANNEXURE R-6 True copy of Notice No
CS 2695/43/149 dt 9-12-94 issued by
Chief Staff Officer to K Ramachandran
Nair

ANNEXURE R-7 True copy of Notice No
CS 2695/43/149 dt 9-12-94 issued by
Chief Staff Officer to V Anandan Nair

ANNEXURE R-8 True copy of Order No
CS 42118/44 dated 16-12-94 of the
first Respondent

ANNEXURE R-9 True copy of Order No
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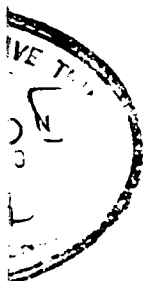
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dt. 18 Jan 95 issued by
Chief Staff Officer (P&A)
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- . ANNEXURE R-12 True copy of
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dt 18 Jan 95 issued by
Chief Staff Officer (P&A)
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- ANNEXURE R-11 True copy of Memorandum No CS 2695/43/149 dt. 18 Jan 95 issued by Chief Staff Officer (P&A) to Shri P Rajeev

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- ANNEXURE R-12 True copy of Memorandum No CS 2695/43/149 dt 18 Jan 95 issued by Chief Staff Officer (P&A) to Smt KX Maria

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

REVIEW APPLICATION NO.31/91 IN
O. A. No. 436/90 199
~~XXXXXXXX~~

DATE OF DECISION 27.8.1991

Kumari Usha Applicant (s) in RA 31/91
(7th respondent in OA 436/90)

Mr.M.R.Rajendran Nair Advocate for the Applicant (s) In RA 31/91

Versus
Sabu N.George & 3 others (applicants in OA 436/90)
Flag Officer Commanding in (Respondent (s) in OA 436/90)
Chief, Southern Naval Command
Cochin & 9 others ...Respondents in RA 31/91
____ Advocate for the Respondent (s)

CORAM:


The Hon'ble Mr. S.P.Mukerji - Vice Chairman
and
The Hon'ble Mr. A.V.Haridasan - Judicial Member

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


JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

In this Review Application, the review applicant is challenging the wisdom of our judgement on merit, which is not permissible in a Review Application. No error apparent on the face of the records pointed out, eventhough it is averred in the Review Application that, there are several mistakes in the order. As we do not find any reason to review the order, the Review Application is rejected.


(A.V.HARIDASAN)
JUDICIAL MEMBER

27/8/91


(S.P.MUKERJI)
VICE CHAIRMAN

27.8.1991