

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.484 OF 1997

Tuesday this the 15th day of July, 1997.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

E.V. Sadasivan,  
Elampathottathil House,  
Perunilam, Poonjar,  
Kottayam District.

.. Applicant

(By Advocate Mr. V.G. Arun)

Vs.

1. Union of India represented by the  
Secretary, Ministry of Defence,  
New Delhi.

2. The Director, Naval Physical and  
Oceanographic Laboratory,  
Bharath Matha College PO,  
Thrikkakara, Cochin.21.

3. K.S.Mani, Kunnel House, Nadakkavu,  
Udayamperoor, Ernakulam.

.. Respondents

(By Advocate Mr. KS Bahuleyan for Sh.TPM Ibrahim Khan)

The application having been heard on 15.7.1997, the  
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

This is the second round of litigation between the  
applicant and the respondents and the fourth round in  
regard to the appointment to the post of Tradesman E under  
the second respondent. The facts in brief can be stated as  
follows:-

2. In the year 1991 the second respondent issued a  
notification inviting applications for appointment to the  
post of Tradesman E in the Naval Physical Oceanographic  
Laboratory reserved exclusively for hearing impaired  
persons. The applicant as also the third respondent  
applied for the post and they were subjected to an

interview on 2.4.92. The applicant was informed by letter dated 26.8.92 (Annexure-3) that the third respondent has been provisionally selected, that the certificate produced by the third respondent has been forwarded to the appropriate authorities to ascertain his eligibility and that in case the third respondent was found not eligible as per the medical certificate the applicant's case would be considered. The applicant thereafter filed OA 1977/93 for a declaration that he was entitled to be appointed as Tradesman E. This application was disposed of by order dated 4.4.94 (A6) permitting the applicant to make a representation with necessary evidence in support of his claim and directing the second respondent to consider that representation alongwith representation made by the third respondent who had filed O.A.406/94 and to pass appropriate orders, considering the case of other candidates also if any. Pursuant to this decision, the applicant made A7 representation on 20.4.94. In obedience to the directions contained in the judgment of the Tribunal the second respondent considered the case and by the order dated 17.5.94 (A8) the applicant was informed that the applicant as also the third respondent could not be treated to be physically handicapped persons (hearing impaired) for employment in terms of the instructions on the subject. The third respondent impugned this order in O.A.1148/94 on the ground that his case was not properly considered by the respondents in the light of the certificate issued by the General Hospital, Ernakulam. That Original Application was disposed of with a direction to respondents 1&2 to consider the matter again in the light of the Medical Certificate issued from the General Hospital, Ernakulam. Accordingly the second respondent in consultation with the Ministry of

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Welfare, New Delhi considered the case of the third respondent in the light of the Medical Certificate dated 25.5.94 issued by the General Hospital, Ernakulam and the rules/instructions on the subject, found that the third respondent satisfied the conditions for appointment as a hearing impaired person and appointed the third respondent as Tradesman-E. It is aggrieved by that the applicant has filed this application for a declaration that he is entitled to be appointed as Tradesman E in the Naval Physical Oceanographic Laboratory reserved exclusively for hearing impaired handicapped, and that the appointment of third respondent without notice to the applicant as illegal and for a direction to the respondents to appoint the applicant as Tradesman - E forthwith.

3. The respondents 1&2 seek to justify the appointment of the third respondent on the ground that in pursuance to the directions of the Tribunal in O.A.1148/94 filed by the third respondent herein, the case of the third respondent for appointment was considered by the competent authority with reference to the medical certificate dated 25.5.94 issued by the General Hospital, Ernakulam, which stated that the third respondent had the physical impairment making him eligible for appointment as Tradesman-E reserved for hearing handicapped persons, and it was then that the third respondent has been appointed.

4. On a careful consideration of the pleadings and the materials placed on record and on hearing the learned counsel for the applicant as also the respondents 1&2 we are of the considered view that the appointment of the third respondent is not vitiated for any reasons requiring judicial intervention. The applicant has been informed as early as in the year 1992 by order dated 26.8.92 (A3) that

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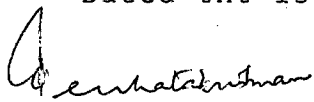



the third respondent has been provisionally selected, that the certificate of physical disability in his case has been forwarded to the competent authority to ascertain his eligibility for the appointment, and that in case the third respondent is found not eligible for the appointment, the case of the applicant would be considered. When the matter was further agitated by the applicant as also by the third respondent pursuant to the directions of the Tribunal the case was considered by the competent authority and applicant as also the third respondent were informed that both of them did not satisfy the eligibility criteria for appointment as hearing handicapped persons. The applicant did not challenge this order but preferred to make representations while the third respondent aggrieved by the decision filed O.A.1148/94 stating that his case was not properly considered in the light of the medical certificate issued from the General Hospital, Ernakulam on 25.5.94. The Tribunal disposed of that application with a direction to the respondents 1&2 to consider the case of the third respondent in the light of the medical certificate issued from the General Hospital, Ernakulam and to take appropriate decision. In obedience to the above direction, the medical certificate issued from the General Hospital, Ernakulam on 25.5.94 wherein it was stated that the third respondent had physical impairment for appointment as Tradesman E reserved for hearing handicapped persons was considered by the competent authority and finding that the third respondent satisfied the criteria for appointment as hearing impaired person, made the appointment. There is nothing on record which would show that the decision of the

competent medical authority that the third respondent had physical incapacity making him eligible for appointment as Tradesman E reserved for hearing impaired is perverse or not based on any material. No such averment has even made in the application. The respondents 1&2 were bound by the decision in O.A.1148/94 to consider the case of the third respondent in the light of the medical certificate. Therefore, the decision of the respondents 1&2 to accept the medical certificate issued from the General Hospital, Ernakulam and to appoint the third respondent as Tradesman E on the ground that he was hearing handicapped cannot be faulted. The applicant who did not agitate the matter further on receipt of the order A8 wherein he was clearly told that he did not have the standard of physical incapacity has no right now to challenge the appointment of the third respondent who has been found to be satisfying the condition for appointment on a post reserved for hearing impaired person as the applicant had been told by order dated 26.8.92 that in case the third respondent is not eligible for appointment only his case would be considered.

6. In the light of what is stated above, finding no merit in this application even prima facie, the same is rejected under Section 19(3) of the Administrative Tribunals Act leaving parties to bear their costs.

Dated the 15th day of July, 1997.

  
P.V. VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER

  
A.V. HARIDASAN  
VICE CHAIRMAN

/ks/

LIST OF ANNEXURES

- Annexure A3: True copy of letter No.NPOL/A/EST/1/127/T'Man'E' dated 26.8.1992 sent to the applicant.
- Annexure A6: True copy of the judgment of Central Administrative Tribunal, Ernakulam Bench in O.A.No.1977/93 dated 4-4-1994.
- Annexure A7: True copy of the representation submitted by the applicant before the second respondent dated 20.4.1994.
- Annexure A8: True copy of the letter No.NPOL/A/LC/192/45 dated 17-5-1994 issued by the Ministry of Defence.

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