

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.501/99

Monday, this the 4th day of October, 1999.

CORAM:

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

HON'BLE MR J.L.NEGI, ADMINISTRATIVE MEMBER

M.G.Padmakumar,  
S/o late Kumaran Nair,  
Arackal House,  
Maruthorvattom.P.O.  
Cherthala.

- Applicant

By Advocate Mr V.R.Ramachandran Nair

vs

1. Union of India represented by  
the Secretary,  
Ministry of Defence,  
New Delhi.
2. The Flag Officer Commanding-in-Chief,  
Southern Naval Command,  
Naval Base, Cochin-682 004.
3. The Chief Staff Officer(P&A),  
Headquarters,  
Southern Naval Command,  
Naval Base, Cochin-682 004.
4. The Commodore Superintendent,  
Naval Ship Repair Yard,  
Naval Base,  
Cochin-682 004. - Respondents

By Advocate Mr Govindh K Bharathan, SCGSC

The application having been heard on 28.9.99, the  
Tribunal on 4.10.99 delivered the following:

O R D E R

HON'BLE MR J.L.NEGI, ADMINISTRATIVE MEMBER

The applicant has filed this application praying for the  
following relief:

"To issue a direction to the respondents to absorb the applicant as Refrigeration Fitter(Skilled) under the 2nd respondent."

2. The applicant has undergone apprentice training as a Refrigeration and Air Conditioning Mechanic, successfully completed the said training. He is aggrieved that despite the fact that there is a vacancy of Refrigeration Fitter(Skilled) under the 2nd respondent and though he is the seniormost, he has not been considered for appointment against the above vacant post. The applicant had approached this Tribunal in O.A.1111/97 and O.A.1712/98. The applicant being the seniormost trained apprentice in his trade was eagerly waiting for being considered for appointment. In O.A.1712/98, the respondents filed their reply statement mentioning that the applicant is the seniormost general candidate to be considered for appointment and that although there is a vacancy of Refrigeration Fitter, the same could not be filled up as there is no necessity to fill up the post since the user unit had not projected any requirement for the same. O.A.1712/98 was disposed of as follows:

"We therefore dispose of this application directing the respondents that as and when there is a need to fill up the vacancy of Refrigeration Fitter(Skilled), the case of the applicant for absorption shall first be considered as he is the seniormost person waiting for absorption."

Learned counsel for the applicant submits that the applicant can only represent before the authorities about his grievances and could not by any documentary evidence show as to whether the user unit did make any demand to fill up the vacancy or not. After the judgement of this Tribunal in O.A.1712/98, the applicant made further attempts to enquire and find out whether any request has been made by the user unit and it was understood that the 4th respondent had already sent the demands for filling up of the vacancy in his unit

which includes the vacancy of Refrigeration Fitter(Skilled) also. It is further stated that there is already a vacancy and the necessity to fill up the vacancy has been pointed out by the user unit, the further issuance of such a vague letter to the applicant is only to drag the situation and to disentitle the applicant in due course of time by appropriate manipulation(A-5). It is alleged that vindictive attitude of respondents might be on account of the applicant's repeated filing of O.As before the Tribunal.

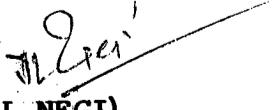
3. Learned counsel for the respondents submitted that the respondents had initiated action to fill up the vacancy of Refrigeration Fitter(Skilled) by a Scheduled Caste candidate as per the earlier orders of vacancy based rosters to comply with Naval Headquarters directive for immediate action to fill up all reserved vacancies. There is no doubt that the applicant is the seniormost general candidate to be considered for appointment against general vacancy of Refrigeration Fitter(Skilled) and he will be considered for appointment when the respondents intend to fill up the vacancy depending upon the need and necessity to fill up the vacancy. For the present, the respondents have taken a decision not to fill up the vacancy as there is no necessity and need to fill up the same. The mere occurrence of vacancy at a particular user unit is not the only criteria, but the administration has to take all the relevant consideration such as need and necessity coupled with financial backing and other existing recruitment policies issued from Naval Headquarters from time to time. It has been further stated that the averments made by the applicant that Refrigeration Fitter is the only post where the vacancy is not filled up is totally false and hence denied. There are other vacancies in Artist Painter, Brush Painter and Radio Mechanic etc. are also lying unfilled since the third respondent

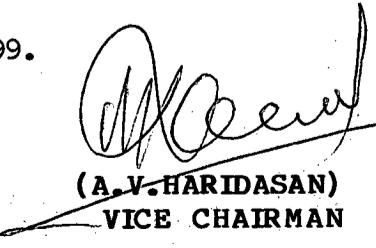
has taken a conscious decision in conformity with the existing policy of Naval Headquarters and keeping other relevant factors in mind not to fill the vacancies at present.

4. We have heard the submissions made by the learned counsel on either side. The respondents have not denied that there is a vacancy of Refrigeration Fitter(Skilled). Respondents after considering various factors including the Government policy of considering expenditure, have decided not to fill up the vacancies for which there is also no urgency to fill the same. Filling up of vacancies in various trade is considered at higher level and in the present case, the third respondent in consultation with the 4th respondent has taken a decision that the vacancies are not required to be filled up for the time being. When a conscious decision is taken by the department not to fill the vacancy, how can this Tribunal interfere with the administrative decision and need not to fill up the same for the present. There is no statutory or legal obligation on the part of the respondents to fill up the vacancy in view of the submissions made above. Respondents in their reply statement have clearly stated that the user unit had requested the respondents to fill up of existing vacancies in a casual manner and the letter was made by a junior officer inadvertently disregard to existing policy and when the Commodore Superintendent, Naval Ship Repair Yard, Cochin came to know about it, he immediately cancelled the request made by a junior officer inadvertently to fill up the existing vacancies(R-3A). The applicant's right is only to consider for appointment when the respondents would fill up the vacancy.

5. In the result, considering the facts and circumstances of the case, finding no merit in the application, the same is dismissed. No costs.

Dated, the 4th of October, 1999.

  
(J.L. NEGI)  
ADMINISTRATIVE MEMBER

  
(A.V. HARIDASAN)  
VICE CHAIRMAN

List of Annexures referred to in the Order:

1. A-5: True copy of the order No.NSRY/10/266/1 dated 17th March, 1999 issued from the office of the 4th respondent regarding the matter of filling up of the vacancies.
2. R3-A: Copy of letter bearing No.NSRY/10/266/1 dated 19th February, 1999 issued by Naval Ship Repair Yard, Kochi.