

O.A. No. 506/07

Dated Friday the 14th September, 2007

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

ORDER

(*Smt.. Sathi Nair, Vice Chairman*):

We heard the learned counsel on the prayer for modification of the interim relief granted by us on 9.8.2007.

2. The applicant's case is basically that he has been working as Engineer & Ship Surveyor in the Respondent Department from 1992 onwards but he has not been granted proper placement in the seniority list of Engineer & Ship Surveyor circulated by Annexure-A/11 order dated 14.2.2006 and that before finalizing the issue regarding seniority the respondents are going ahead with promotions to the post of Deputy Chief Surveyor, which is the next post in the hierarchy. He apprehends that the persons juniors to him will be promoted to the post of Deputy Chief Surveyors due to non finalization of the correspondence between the 2nd and 3rd respondents (UPSC) with regard to pre-dating of his appointment with effect from 13.9.1995. The learned counsel for the applicant has taken us through the averments in the application and history of the case from 1995, when the original selections were conducted by UPSC which lead to the filing of OAs 693/96 and 942/95 by another

adhoc appointee Sri SC Upadhayay. These OAs were allowed by the Central Administrative Tribunal, Calcutta Bench in favour of the applicant therein and aggrieved by the non-implementation of the order a contempt petition had been filed before the Tribunal at Calcutta Bench and thereafter, the Hon'ble High Court has stayed further proceedings in the contempt petition. Thus, it has transpired that for the last 10 years the matter is pending at that stage and the 2nd and 3rd Respondents are in correspondence with each other. According to the learned senior counsel, pendency of the case of Sri SC Upadhayay need not be a bar for finalization of the applicant's case as purportedly by Annexure-A/12, the applicant's name had been recommended by the UPSC for appointment and in the merit order shown in the document, the applicant is senior to 4th respondent. Therefore, the senior counsel further contended that the objection is only to the likely appointment of the 4th respondent, as according to merit order he is junior to him and that the applicant has no objection if other persons are promoted and he would be satisfied if one post is earmarked / reserved for him pending disposal of this original application.

3. Reply statement has been filed by official respondent Nos. 1 to 3 contending that the UPSC has recommended one general and one S.C. candidate, and they have already been appointed, the S.C. candidate being the 4th respondent in this OA. Since the appointments were made in 1995 itself and the interim

stay granted on the contempt petition by the Calcutta High Court is still pending, the respondent cannot fill up the second post, which can be done only on the basis of the final verdict of the Hon'ble High Court of Calcutta. Therefore, they contend that the applicant cannot claim seniority over the 4th respondent.

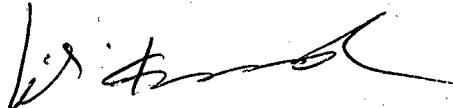
4. Further it is submitted that five vacancies of Deputy Chief Surveyor in the Department, which are to be filled up are key strategic posts and the Department is experiencing hardship and difficulties in running the department because of the interim order of this Tribunal; and since the claim of the applicant is untenable and imaginary, the interim order should be vacated.

5. After hearing both sides and going through the records made available to us, we are of the view that the applicant's placement in the seniority list of Engineer & Ship Surveyor has to be adjudicated after examining and hearing the respective claims made by the parties in this OA. The seniority list at Annexure-A/11 shows against the name of the applicant at Serial No.8, that the details regarding his appointment are in correspondence with the Ministry and it is not a final placement. The final view can be taken only after final adjudication of the matter on the status of the Court cases and views of the UPSC, as the merit position in the panel has to be determined by the UPSC, which would ultimately determine the seniority of all those included in the panel.

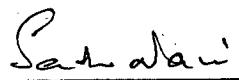
6. At the same time, we also appreciate the difficulties expressed by the respondents that all the 5 posts at senior level cannot be kept vacant for an indefinite period till the final hearing of this OA. Without deciding on the merits of the issue, we are not inclined to modify the interim order as prayed for by the applicant to keep one post reserved for him, till disposal of this OA. However, it is accepted that since the seniority of the applicant, according to department itself is tentative, any promotion made on the basis of the impugned seniority list has to be provisional only and subject to the outcome of this original application.

7. In this view of the matter, we modify our interim order dated 09.8.2007 and permit the respondents to proceed with the promotion to the post of Deputy Chief Surveyors. However, we make it clear that the appointments so made in pursuance thereof would be subject to the final outcome of this original application.

Dated the 14th September, 2007.



(Dr.KSB Rajan)
Judicial Member



(Smt. Sathi Nain)
Vice Chairman

stn

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.506/07

Thursday, this the 4th day of October, 2007

C O R A M:

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER**

Mukkadayil Pylee John
S/o late MP Pylee,
Engineer and Ship Surveyor,
And now holding the charge of
Principal Officer,
Mercantile Marine Department,
Department of Shipping
Ministry of Shipping, Surface Transport and Highways,
Willington Island, Cochin-682 009. Applicant

(By Advocate Mr. Millu Dandapani)

Vs.

1. The Union of India, represented by the Secretary , Ministry of Shipping, Road Transport and Highways, Transport Bhawan, 1, Parliament Street, New Delhi-110001.
2. Director General of Shipping, Jahaz Bhawan, Walchand Heerachand Marg, Mumbai-400001.
3. The Union Public Service Commission, Dholpur house, Shajahan Road, New Delhi-110001, represented by its Secretary.
4. B.R.Shekhar, Engineer and Ship Surveyor, Mercantile Marine Department, Anchor Gate Building, 2nd Floor, Rajaji Salai, Chennai-600019.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC (R.1-3)
(By Advocate Mr. Shafik M.A.(R4)

The application having been heard on 4.10.07
the Tribunal on the same day delivered the following:

ORDER**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN**

When the matter came up before the Bench learned counsel for the applicant submitted that he would like to withdraw the O.A. at this stage, since the Contempt Petition (Civil) 90/98 in O.A.93/96 is still pending before the Culcutta Bench, as the Hon'ble High Court of Calcutta has stayed the proceedings in the CP (C). Senior Counsel appearing for applicant submits that, permission for withdrawal may be granted with liberty to the applicant to approach this Tribunal after vacation of stay and final disposal of the CP(C) before the Calcutta High Court.

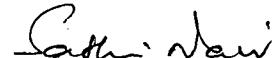
2. Shri Shafik M.A., learned counsel appearing for R-4 (private respondent) has seriously objected to granting of liberty in the manner stated above.
3. After hearing the counsel on both sides, we permit the applicant to withdraw this O.A. with liberty to approach the appropriate forum in accordance with law.
4. O.A. is dismissed as withdrawn.

Dated the 4 th October 2007.



DR.K.B.S.RAJAN
JUDICIAL MEMBER

rv



SATHI NAIR
VICE CHAIRMAN