

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.529 /07

Wednesday, this the 7th day of November, 2007.

CORAM

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

1. All India Naval Clerks Association,
Door No.39.3293 C 2nd Floor,
KSN Menon Road, Kochi-16
represented by its General Secretary,
K.S.Babu, working as Assistant,
INS Garuda,
Naval Base, Kochi-4.

2. Benjamin Samuel,
Office Superintendent,
Naval Air Craft Yard(K),
Naval Base, Cochin.

3. N.Velayudhan,
Office Superintendent,
Naval Ship Repair Yard(K),
Naval Base, Cochin.

....Applicants

(By Advocate Mr S Radhakrishnan)

V.

- 1 Union of India represented by
the Secretary,
Ministry of Defence,
New Delhi.
2. The Chief of the Naval Staff,
Integrated Headquarters of Ministry of Defence,
New Delhi-110 011.
3. The Chief Staff Officer (P&A),
Hqs Southern Naval Command,
Kochi-682 004.
4. The Director (G),
Integrated Headquarters of Ministry of Defence,
New Delhi-110 011.
5. The Union Public Service Commission
represented by the Secretary,
UPSC, Shajahan Road,
New Delhi.

....Respondents

(By Advocate Mr. TPM Ibrahimkhan, SCGSC)

This application having been finally heard on 7.11.2007, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The dispute raised by the All India Naval Clerks Association, Kochi and 2 others in this O.A is regarding maintenance of the quota fixed for promotees and direct recruits in the grade of Administrative Officer Grade-II under the respondents.

2. The undisputed facts are that the cadre of Administrative Officer in the Indian Navy has 4 categories of posts. The names of those categories, their sanctioned strength, pay scale of each category of posts and the method of recruitment are as under:

<i>Sl.No.</i>	<i>Name of the Post</i>	<i>Number of Posts</i>	<i>Pay scale</i>	<i>Method of Recruitment</i>
1	Chief Administrative Officer	5	Rs.12000-16500	50% by promotion and 50% by deputation
2	Senior Administrative Officer	9	Rs.10000-15200	50% by promotion and 50% by deputation
3	Administrative Officer Grade I	7	Rs.7500-12000	100% by promotion
4	Administrative Officer Grade.II	48	Rs.6500-10500	75% by promotion and 25% by direct recruitment

An advertisement was issued by the 4th respondent, viz, UPSC in the Employment News dated 14-20 April, 2007 inviting applications for 9 posts of Administrative Officers grade in the Indian Navy, Ministry of Defence. According to the applicants, as the total sanctioned strength of the Administrative Officers Grade-II is only 48 and only 25% of the same could be filled up by direct recruitment, the maximum representation of the direct recruitment in the cadre is to be limited to 12 and since 8 out of them have already been working, only the remaining vacant posts could be filled up. They have, therefore, challenged the

A-1 notification of vacancies.

3. While issuing the aforesaid advertisement, according to the respondents, they have relied upon the above A-5 DOPT OM dated 9.1.2007, by which the following existing instructions contained in OM dated 25.5.1998 was rescinded:

"The Supreme Court in its judgment in R.K.Sabharwal's case has ruled in favour of a change over from the "existing vacancy" based reservation roster to "post" based roster. Under the existing policy the determination of different quotas for recruitment is vacancy based. In order to comply with the aforesaid Supreme Court judgment, which has been implemented vide the DOPT OM No.36012/2/96-Estt(RS) dated the 2nd July, 1997, it will be necessary to amend the existing Service Rules/Recruitment Rules under column 11 of Annexure-1 in the DOPT guidelines dated the 18th March 1988 to replace the words "percentage of the vacancies to be filled by various methods" by percentage of the posts to be filled by various methods".

The above change was made on the basis of the Hon'ble Supreme Court's judgment in State of Punjab & others v. Dr R.K.Bhatnagar & others (C.W.P.No.5893/1997 decided on 18.12.1998) which is as follows:

"The quota of percentage of departmental promotees and direct recruits has to be worked out on the basis of the roster points taking into consideration vacancies that fall due at a given point of time....there is no question of filling up the vacancy created by the retirement of a direct recruit by a direct recruit or the vacancy created by a promotee by a promotee".

However, when the Apex court in its judgment dated 22.2.1999 in the case of All India Federation of Central Excise v. Union of India and others held that the decision rendered by the Constitution Bench in R.K.Sabarwal v. State of Punjab & others [1995(1) SLR 791 (SC)] in connection Article 16(4) and the operation of roster of achieving the reservation of posts of Scheduled Castes/Scheduled Tribes & Backward classes as per the scheme of reservations cannot be pressed in service for the scheme of method of appointment, the method of recruitment as provided in Col.11 of A-11 to the standard recruitment rules was continued to be as follows:



*"Method of recruitment;
Whether by direct recruitment or by promotion or by
deputation/absorption, & percentage of the vacancies to be filled
by various methods."*

4. Interpreting the aforesaid OM dated 9.1.2007, the respondents have earmarked 25% of the 20 vacancies which have been identified during the year 2007-08, which came to 5. They have further added the balance 4 vacancies in the DR quota already existing prior to 2007-08. According to them, the 4 vacancies earmarked for DR has to be left untouched and the 20 vacancies that arises in the year 2007-08 required to be distributed in the ratio of 3:1. Thus, the total vacancies in DR quota to be filled up was computed as 9. Their further contention is that the interest of the promotees has not been prejudiced in any manner and, therefore, the application itself is not maintainable. They have also contended that the applicant No.1 is the Association representing the Clerical Cadre and they have no locus standi to represent the Administrative Officer, the 2nd and 3rd applicants were not even eligible for promotion in the year 2007-08 and the 3rd applicant is in fact far junior in the grade of Office Superintendents and he is not in the zone of consideration in the year 2007-08.

5. The applicants relying on A-3 seniority list of Administrative Officer Grade-II as on 1.11.2005, submitted that according to the said seniority list, the total sanctioned strength is 48, of which 31 persons are occupying the grade of A.O and there were 17 vacancies to be filled up in the ratio of 75% : 25% between promotees and direct recruits. However, since ^{*4} 8 of the promotees mentioned in A-3 seniority list were getting retired during the current year, the vacancy would go up to ^{*21} 25. Since the occupied strength is reduced to 27 the total number of vacancies in 2007 is not 20 but it is 21 including the vacancies of direct recruits as well as promotees. Out of this 21 vacancies, since direct recruits are entitled to get only 25% of the vacancies, the total direct recruitment that can be made based upon the vacancy position of the year 2007 is only 5. But in A-4, apart

* Corrected as per order dated 11.1.2008 in
RA.NO.34/2007 in OA.NO.529/2007

from this 5, the respondents have again added 4 existing vacancies of direct recruits to make it 9 which is clearly a duplication of the vacancies and is therefore wrong.

6. We have heard Shri S Radhakrishnan counsel for the applicants and Shri TPM Ibrahimkhan, SCGSC for respondents. We find that there is considerable merit in the argument of the counsel for the applicants. The fallacy of the argument of the respondents is that they have assessed the vacancies of DR as 9 against the permissible limit of 25% of the total vacancies which is only 12. However, since the OM dated 9.12.2007 which has been issued in compliance of the Apex Court judgment in the case of State of Punjab & others v. Dr R.K.Bhatnagar (supra) permits to fill up 25% of the total vacancies of the recruitment year 2007-08 which is only 21, it has to be distributed in the ratio 75:25 (3:1) and it will be 15/16 vacancies for promotees and 5 vacancies for the DR. We, therefore, allow this O.A and declare that respondents can fill up only 25% of the vacancies which have arisen in the grade of Administrative Officers Grade-II till the year 2007. Therefore, A-1 advertisement inviting applications to fill up 9 posts of Administrative Officer in the DR quota is illegal and arbitrary and therefore, the same is quashed and set aside. The respondents may revise the advertisement limiting the vacancies in the DR quota to 5 and fill up those posts in accordance with the recruitment rules. No costs.

Dated, the 7th November, 2007.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN