

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA NO.599/2005
Tuesday this the 27th day of February, 2007.

CORAM: HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.V. Pratap Singh,
Anila Nivas,
K.S. Mangalam P.O.,
Vaikom. ... Applicant
By Advocate Mr. K. Ramakumar

V/s.

Union of India,
represented by Flag Officer,
Commanding in Chief,
Southern Naval Command,
Kochi-682 004. ... Respondent
By Advocate Ms. Viji for Mr. Sunil Jose ACGSC

The application having been heard on 27.2.2007 the Tribunal delivered the following on the same day:

Hon'ble Mrs. Sathi Nair, Vice Chairman
(ORDER)

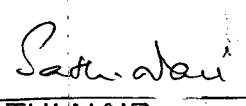
Counsel for applicant has been seeking adjournment on several occasions. Today also the situation is the same as a proxy counsel is seeking adjournment on his behalf. The reply has been filed on 29/3/2006. No rejoinder has been filed till date.

It seems the neither the applicant nor his counsel is interested in prosecuting his case.

OA is dismissed for want of prosecution. No costs.


GEORGE PARACKEN
JUDICIAL MEMBER

abp


SATHI NAIR
VICE CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 599 OF 2005

Tuesday, this the 12th day of June, 2007

CORAM :

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Dr. K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

K.V.Pratap Singh
Anila Nivas
K.S.Mangalam P.O.
Vaikom : **Applicant**

(By Advocate Mr. K.Ramakumar)

Versus

Union of India represented by the Flag Officer
Commanding in Chief
Southern Naval Command
Kochi - 682 004 : **Respondent**

(By Advocate Mr. Sunil Jose, ACGSC)

The application having been heard on 12.06.2007, the
Tribunal on the same day delivered the following :

ORDER

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, a successful candidate for the post of Radio Mechanic (Skilled) was directed to appear himself for medical examination and also bring all the certificates in original vide order dated 06.06.2005 at Annexure A-1 Attestation form was also sent to him for due completion. The applicant produced certificate relating to his caste as well as educational qualifications. The community certificate included Annexure A-5 certificate issued by the Thahsildar, Taluk Office, Vaikom, Annexure A-6 certificate issued by the same authority and also Annexure A-4 certificate issued by the same authority.

According to these certificates the applicant belongs to the Hindu Mala Arayan caste, which is recognised as Scheduled Tribe. According to the applicant after completion of the medical examination, no appointment order has been issued and hence this application.

2. Respondents in their reply have stated that vide Annexure R-1 there was a complaint from one Shri T.Vijaya Kumar stating that in so far as the caste of the applicant is concerned, the same is under dispute in respect of his brother Shri V.Biju and a case is pending finalisation in the Hon'ble High Court of Kerala. According to the respondents a Screening Committee went to the entire affair as early as in 2001 which submitted its report vide Annexure R-2 wherein it was stated that the applicant's brother V.Biju does not belong to Mala Arayan community of the scheduled tribe but belongs to OBC Arayan community. Referring to the dispute as to the community which the applicant's brother and sister belong, Headquarters, Southern Naval Command, Kochi addressed, vide Annexure R-3 letter, to the Director/Administrative Officer, KIRTHADS, stating that it is proposed not to consider the applicant for appointment as Tradesman against reserved quota of scheduled tribe till finalisation of Court case.

3 The applicant in his rejoinder has stated that in so far as the recommendation of the Screening Committee was

concerned, by an interim order dated 24.01.2001 in C.M.P.No.3767/2001 in M.F.A. 424/01-A (Annexure A-10) the Hon'ble High Court has granted stay. In so far as the community is concerned, in O.P.No.274/80-N decided as early as 13.10.1980 wherein the petitioner was K.K.Amminikutty (mother of the applicant), the Hon'ble High Court has held as under :-

" It goes without saying that the petitioner's children belonging to Scheduled Tribes are entitled to the educational concessions they are entitled under valid government orders."

4. In Writ Appeal 677/95-P decided on 14.08.1998, filed by the State of Kerala in which apart from others, the applicant was also impleaded as respondents, the Hon'ble High Court has held as under :-

" In the result the appeal is disposed of finally declaring that since the mother of the petitioner belongs to Scheduled Tribe, the petitioners will be entitled to all the benefits available to Scheduled Tribe under the Government order dated 25.01.1977 irrespective of the fact whether they themselves belong to Scheduled Tribe. "

5. Counsel for applicant submitted that when he has a judgment of the Hon'ble High Court which goes in his favour and when the Screening Committee's report already stands stayed, the respondents cannot legally withhold the appointment of the applicant on the ground that the applicant's caste is under dispute.

6. Counsel for respondents submitted that as the records would show that there has been some confusion relating to the community of the applicant (ST/OBC), the respondents have decided to keep the appointment pending till the finalisation of the case.

7. Arguments were heard and documents perused. Admittedly, as on date, the Screening Committee's report stands stayed and as such no action on the basis of the recommendations of the Screening Committee could be taken and, if taken, would mean Contempt of Court. Further, the Hon'ble High Court in Writ Appeal filed by the State of Kerala, wherein the Tahsildar, Vaikom Taluk is also one of the appellate, the Hon'ble High Court, has clearly specified that the applicant herein is entitled to the benefit available to Scheduled Tribe. This judgment does not seem to have been challenged before the Apex Court. A such, the same has attained finality.

8. In view of the above, the claim of the applicant for a direction to the respondent to issue appointment order has to be allowed. The respondents could have made the appointment of the applicant as early as in July, 2005 itself, with a rider that the same is subject to the outcome of the pending case before the Hon'ble High Court. It is not their case that somebody else in the waiting list of Schedule Tribe was to be offered an appointment. Thus, the O.A is allowed. Respondents are directed to issue

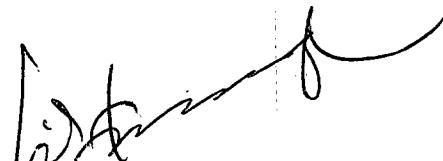
necessary offer of appointment to the applicant and on his acceptance he be inducted into the strength of Respondents' Organisation. It is, however open to the respondents to stipulate that the appointment is subject to the final outcome of M.F.A.No.424/01-A.

9. Necessary appointment order be issued to the applicant within a period of six weeks from the date of communication of this order. No costs.

Dated, the 12th June, 2007.



K.S.SUGATHAN
ADMINISTRATIVE MEMBER



K.B.S.RAJAN
JUDICIAL MEMBER

vs