

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 607/2007

MONDAY this the 2nd day of March, 2009

C O R A M

**HON'BLE DR K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

N.R. Chandran s/o Rajappan
Sarang Laskar, Indian Coast Guard
HQ R.S. No.4 c/o Fleet Mail Office Applicant

By Advocate Mr. U. Balagangadharan

Vs.

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| 1 | Flag Officer Commanding -in-Chief
Southern Naval Command
Kochi | |
| 2 | The Commander
Indian Coast Guard
Coast Guard District, HQ RS NO.4
C/o Fleet Mail Officer, Kochi. | |
| 3 | T.N. Preshi,
Master (Oil Tanker). NSRY
Kochi. | Respondents |

By Advocate Mr TPM Ibrahim Khan, SCGSC for R 1 & 2
Advocate Mr. P. Ramakrishnan for R-3

The Application having been heard on 17.2.2009 the Tribunal delivered the following

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by Annexure A-4 notification dated 28.4.2007 of Southern Naval Command by which the post of Master (Oil Tanker) is sought to be filled from General category and Annexure A-8

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order dated 24.1.2008 by which the 3rd respondent, an OBC candidate was appointed to the post.

2 The applicant, who belongs to the Scheduled Caste community, commenced service as Sarang under the 2nd respondent viz. The Indian Coast Guards on 13.4.1987, acquired II Master Certificate and I Master Certificate. He was also awarded Certificate of competency as Master of Steem Vessel on 26.3.2004. While so, the 1st respondent issued notification dated 28.4.2007 (A-4) inviting applications for the post of Master (Oil Tanker). The applicant attended written test, interview and practical tests. The 3rd respondent a General candidate was selected and appointed (A-8). According to the applicant the vacancy should have been earmarked for SC and the applicant should have been selected and appointed. The applicant has raised the following grounds:

- (i) Annexure A-4 notification is ex facie arbitrary, illegal and unconstitutional and liable to be set aside.
- (ii) There are two posts of Master (Oil Tanker) and there is insufficient representation of SC.
- (iii) The present vacancy is to be filled by SC candidate as per the reservation roster maintained in the office of the respondents.
- (iv) The applicant is the lone qualified departmental candidate and it is his last chance in his career.
- (v) The 3rd respondent being an OBC candidate the consequent appointment of 3rd respondent is unsustainable.

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3 The official respondents and the party respondent opposed the O.A. by filing separate reply statements.

4 The official respondents in their reply statement submitted that the applicant has no locus standi to agitate the matter as he is not actually aggrieved by any impugned order. In fact he applied for the post after having fully understood and satisfied with the terms and conditions in the A-4 notification. However, at no point of time he had challenged the A4 notification. Therefore, the prayer for setting aside A-4 notification at this point of time is not fair. They have submitted that the applicant fully knowing that the vacancy was advertised as General vacancy applied and participated in the selection. It is the duty of the Selection Board to find out the most suitable person amongst the eligible candidates. They have admitted that there were two posts which can be filled up by promotion as per the existing Recruitment Rules. Since there were no eligible candidate to be promoted for the one vacant post, A-4 notification was published under the failing which clause.

5 They further submitted that the Govt. had introduced Post Based Roster in the year 1997 onwards based on Hon'ble Supreme Court's judgment in Sabarwal's case. Therefore, on retirement of Shri P.K. Sadanandan, belonging to SC community, the vacancy was filled through Direct Recruitment. Due to the retirement of Shri C.V. Joy due to non-availability of eligible candidate for promotion in Southern Naval Command A-4 notification was published showing point number 4 in the Post Based Roster which is UR (Un Reserved) only. Hence they contended that the action of the respondents to fill up the vacancy by A-4 notification in

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accordance with the norms set by the Hon'ble Apex Court and the government to fill up the vacancies by Post Based Roster, is not arbitrary, illegal or unconstitutional.

6 The 3rd respondent in his reply statement submitted that he is qualified to be appointed to the post of Master (Oil tanker) and has been selected after being successful in the written, interview and practical tests conducted by the respondents. The applicant had also participated in the above selection processes without any demur therefore, the challenge against A-4 notification at this juncture is illegal and unsustainable. He submitted that as per the **Post Based Roster**, the vacancy at the 4th point is for general candidate and hence there is no anomaly in his appointment.

7 We have heard Shri U. Balagangadharan the learned counsel for the applicant, Ms Jisha counsel appearing for the SCGSC and Mr. Pratap appearing for the counsel for R-3.

8 The short question that comes up for consideration is whether a candidate having participated in the selection process can challenge the notification itself after the selected candidate is appointed. In a catena of judgments various Courts/Tribunal held that the candidate having participated in the selection process is estopped from challenging the selection.

In Om Prakash Vs. Akhilesh Kumar (AIR 1986 SSC 1043) the Hon'ble Supreme Court held that "having appeared in a test, one cannot question its validity after failing in the test or finding himself unlikely to



pass".

In University of Cochin Vs. Kunjoonjamma and Others (1997 SCC (L&S) 976) the Hon'ble Supreme Court has held in para 4 of the judgment that "In fact the first respondent also had applied and sought selection but remained unsuccessful. Having participated in the selection, she is estopped to challenge the correctness of the procedure."

9 The Government had introduced **Post Based Roster** by replacing the then system of Vacancy Based Roster in terms of DOPT OM No. 36012/2/96-Estt(Res) dated 2.7.1997 based on Hon'ble Apex Court's judgment in **Sabarwal's** case. We have gone through the model of special representation recruitment registers, to be maintained, when the number of posts is 13 or less, as is illustrated in the aforesaid OM. In this particular case, there are only two posts of Master (Oil Tanker). Both are to be filled up by promotion. In the event of non-availability of eligible candidate for promotion in Southern Naval Command, the vacancy will be notified under direct recruitment. After the introduction of the post based roster, this is the fourth time that recruitment under Direct Recruitment is resorted to. As per the points in the roster for direct recruitment, when the number of posts is 13 or less, only the 7th point goes to SC. Hence, the vacancy was not notified for SC. The applicant has stated that after the retirement of Shri P.K. Sadanandan (SC) in 1998, his vacancy was not earmarked for SC. Shri P.K. Sadanandan's name figures in the 40 point roster maintained for the promotion quota and not in the 100 point roster for the DR quota.

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10. The applicant being qualified was considered along with others. The Selection Board is duty bound to select the most suitable person amongst the eligible candidates considered for the post. Therefore, we do not find any illegality or arbitrariness in the action of the respondents. Moreover, we are of the view that, the applicant who applied for the post, having participated in the written and practical tests and interview without a demur, knowing fully well that it is not a roster point for SC, after completion of the selection process and knowing that he is not selected cannot turn round and challenge the notification and appointment of the selected person as illegal, arbitrary and unsustainable in the eye of law.

11. In view of what is stated above, the O.A lacks merit, it is dismissed. There shall be no order as to costs.

Dated 2nd March, 2009.


K. NOORJEHAN
ADMINISTRATIVE MEMBER


DR. K.B.S. RAJAN
JUDICIAL MEMBER

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