

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 144 of 2009

MONDAY..., this the 14^{th} day of June, 2010

CORAM:

**HON'BLE Mr. JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

A.N. Satyan,
S/o. Narayanan,
Residing at Aghuveliparambil House,
Kadavanthra, Kochi – 20. Applicant.

(By Advocate Mr. T.A. Rajan)

v e r s u s

1. Union of represented by Secretary,
Government of India,
Ministry of Defence, New Delhi
2. The Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command,
Naval Base, Kochi – 4
3. The Chief Staff Officer (P&A),
Headquarters, Southern Naval Command,
Naval Base, Kochi – 4 Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The Original Application having been heard on 02.06.10, this Tribunal on 14-06-10. delivered the following :

O R D E R
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This O.A. is filed for a direction to the respondents to absorb the applicant in the existing SC vacancy of Pipe Fitter/Plumber in the vacancy earmarked for Ex- Naval Apprentice.

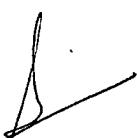


2. The applicant has ITI certificate in the trade of Plumber. He has undergone apprenticeship training in the designated trade of Plumber in the Apprentice Training School, Naval Ship Repair Yard, Kochi, from 01.09.1988 to 31.08.1990. He has passed the trade test and obtained National Apprentice certificate issued by the National Council for vocational training. The Recruitment Rules stipulate that 60% of the designated posts are to be filled up by absorption of Ex-Naval Apprentices and the remaining 40% by promotion of skilled workers with four years regular service in the grade, failing which by direct recruitment.

3. The applicant contends that there is a vacancy caused by the promotion of Shri M.G. Jayan. When Shri M.G. Jayan was appointed on the post of Pipe Fitter, six Ex-Naval Apprentices senior to him in the general category were waiting for absorption to the said post. The applicant, therefore, contends that Shri M.G. Jayan was appointed in the quota reserved for SC candidate in the category of Pipe Fitter/Plumber. The applicant is the seniormost SC candidate, hence he should be absorbed in the existing SC vacancy of Pipe Fitter/Plumber. Non-consideration of the applicant for absorption in the existing SC vacancy of Pipe Fitter/Plumber is arbitrary and illegal.

4. The respondents in their reply submitted that Shri M.G. Jayan although belongs to SC category, was appointed against general vacancy and, therefore, the vacancy due to his promotion cannot be filled in by the applicant in the reserved quota for SC.

5. In the rejoinder, the applicant contested the claim of the respondents that Shri Jayan was appointed against general vacancy.

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6. In the reply affidavit, the respondents admitted that at the time when Shri Jayan was absorbed vacancy based roster was maintained for absorption of ex-apprentices. As per the said roster, the vacancy that arose in 1995 was at SC point and Shri M.G. Jayan was appointed against the said SC vacancy. However, consequent upon the Apex Court judgements in the case of *R.K. Sabharwal vs. State of Punjab* as well as *J.C. Mallik vs. Ministry of Railway*, the Government of India issued instructions vide DOP&T O.M. No. 36012/2/96-Estt(Res) dated 02.07.1997 that the reservation of jobs for the backward classes (SC/ST/OBC) should apply to posts and not to vacancies and directed to operate post based roster instead of vacancy based roster. Accordingly, a revised roster was being maintained for the trade of Pipe Fitter (SK) wherein SC vacancy comes at 7th point. Since Shri M.G. Jayan was placed against the unreserved 2nd point in the revised roster, it was stated in the reply statement that Shri Jayan was appointed against general vacancy. However, the vacancy which arose due to the promotion of Shri M.G. Jayan was not to be filled in by SC candidate as the SC point comes at the 7th point. Presently, there is a vacancy in the trade of Pipe Fitter for absorption of ex-apprentice. Next vacancy for absorption is at the 7th point which is to be filled in by the SC candidate. The respondents have no objection to absorb the applicant against the available vacancy, being seniormost SC candidate.

7. It was further submitted by the respondents that they have been appointing ex-apprentices without any restriction on the age limit since no age bar was prescribed by the respective SRO for absorption of ex-apprentices. However, in June, 2009, the Eastern Naval Command Headquarters, intimated the 2nd



respondent that as per the Hon'ble Supreme Court judgement in the case of **U.P. State Road Transport Corporation and Another vs. U.P. Parivahan Nigam Shishukhs Berozgar Sangh and Others**, AIR 1995 SC 1115, "if age bar would come in the way of trainees, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rules. If service rule be silent on the aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given." Accordingly, the SC candidates are eligible to be considered upto the age of 32 years (30 + 2 years training period) in the light of the above Supreme Court verdict. The 2nd respondent has also taken up the matter with the Integrated Headquarters, Ministry of Defence, for clarification on the issue of age relaxation. The decision of the competent authority is awaited. Although a post is lying vacant and the applicant is seniormost to be considered for the post, the respondents are not in a position to consider him for appointment till the decision on age relaxation in the light of the judgement of the Apex Court is received from the competent authority.

8. Arguments were heard and documents perused.

9. The question to be answered in this O.A. is whether the decision of the Apex Court in **AIR 1995 SC 1115** will come in the way of the respondents in appointing the applicant on the post of Pipe Fitter/Plumber lying vacant at present. The judgement of the Apex Court is that if age bar would come in the way of trainees, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rules. If the service rule is silent on the aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given. Relaxation is to be given if there is no

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provision for that in the concerned service rules in cases where there is an age bar.

10. As per the averment of the respondents, no age bar is prescribed in the respective SRO for absorption of Ex-Naval Apprentices. If there is no age bar prescribed in the SRO for absorption of Ex-Naval Apprentices, then the judgement of the Hon'ble Supreme Court in **AIR 1996 SC 1115** will not be applicable in the case of the applicant herein because the question of relaxation of age bar does not arise. The courts do not read into the rule what is not already there. Moreover, the Apex Court gave supremacy to the service regulations when it stated in **AIR 1996 SC 1115 (supra)** as under :

"We make it clear that while considering the cases of the trainees for giving employment in suitable posts, what has been laid down in the Service Regulations of the Corporation shall be followed, except that the trainees would not be required to appear in any written examination, if any provided by the Regulations."

The respondents are apparently in the wrong when they fail to consider the case of the applicant stating that the decision of the Apex Court applies to his case.

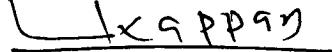
11. In view of what is stated above, the respondents are obviously in a position to consider the applicant for appointment to the post of Pipe Fitter/Plumber which is lying vacant at present. There is no need for them to wait for the decision on age relaxation from the competent authority because the Apex Court judgement does not come in the way of the respondents in appointing the applicant on the post of Pipe Fitter/Plumber lying vacant at present. Accordingly, it is ordered as under.



12. The O.A. is allowed. The respondents are directed to consider the applicant for the post of Pipe Fitter / Plumber for absorption in the available vacancy disregarding the age factor, within a period of one month from the date of receipt of a copy of this order. No. costs.

(Dated, the 14th June, 2010)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE K THANKAPPAN
JUDICIAL MEMBER

cvr.