

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.159 OF 2002

Friday, this the 6th day of August, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

Jessy James D/o V.D.James,
Valiaveetil House,
Kadavanthara,
Cochin-682020. ..Applicant

(By Advocate Mr.N.N.Sugunapalan)

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1. Command Administration and
Personnel Officer,
Headquarters, Southern Naval
Command, W.Island, Cochin.4.
2. The Flag Officer Commanding in Chief
Southern Naval Command,
Naval Base PO, Cochin.4.
3. Union of India - represented by
Secretary, Ministry of Defence,
Raksha Bhavan, New Delhi. ..Respondents

(By Advocate Mr.C.Rajendran, SCGSC)

The application having been heard on 15.6.2004, the Tribunal
on 6.8.2004 delivered the following:

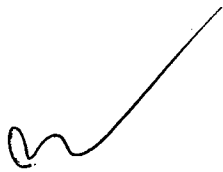
O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, Jessy James has filed this application aggrieved by the refusal on the part of the respondents to absorb her in the post of Fitter, Electric Control (SK) on the ground that she has crossed age limit of 27 years and challenging Annexures.A7 and A9 orders by which she has been told that she is not eligible for absorption as she had crossed 27 years of age.

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2. The material allegation in the application are as follows. The applicant is an ex-apprentice who has successfully completed the apprenticeship training in the Apprentice Training School attached to the Naval Ship Repair Yard, Kochi during 1st October, 1990 to 30th September, 1991 in the trade of Control Fitter in non-designated trade with the highest marks till then. She was waiting for absorption in terms of the Recruitment Rules Annexure.A.2. Finding that she was not being absorbed she submitted Annexure.A.3 representation on 10.10.1996. She was informed by Annexure.A4 reply dated 18.11.1996 that she was the 5th general candidate to be absorbed and that absorption was kept in abeyance pending revision of the Recruitment Rules. From the panel of 5 in which the applicant was the last, two were appointed prior to 1999 and the third one was appointed on 29.3.2000. Thereafter two vacancies arose one on 1.8.98 and the other on 15.4.2000. The applicant and Sri K.Damodaran immediately above her were to be absorbed against these two vacancies, but it was not done. Now there are four vacancies of which two are general. The applicant submitted two representations Annexure.A.5 and Annexure.A.6. She was by Annexure.A7 informed that since she had completed 27 years of age as per the amendment to the Recruitment Rules by SRO 150/2000 the upper age limit for appointment/absorption to the post of Tradesman Skilled was 27 years she was ineligible unless she was entitled to any relaxation. The applicant filed an appeal to the second respondent in reply to which she received Annexure.A.9 reply stating that she having crossed upper age limit of 27 years was ineligible for absorption and appointment. Of other



Tradesmen mentioned in the representations made after the notification of Recruitment Rules were justified on the ground that pre-appointment process had been initiated in these cases before the receipt of the revised Recruitment Rules. Aggrieved by rejection of her request for absorption the applicant has filed this application seeking to set aside the Annexure.A.7 and A.9 orders and for a direction to the respondents to absorb her as the age limit does not apply to her case, on the ground that the vacancies had arisen before the notification of the revised Recruitment Rules.

3. Respondents in the reply admit that the applicant was the top scorer of marks. They contend that one vacancy which accrued in 1999 prior to amendment of the Recruitment Rules SRO 150/2000 being reserved for Scheduled Caste candidates the applicant is not entitled to be appointed against that vacancy and the three vacancies ^{which} now exist having accrued after issue of SRO 150/2000 which prescribe upper age limit of 27 years the applicant is not entitled for absorption.

4. From the above pleadings it is evident that one vacancy had arisen on the voluntary retirement of the incumbent on 1.8.1998, one vacancy accrued on account of retirement of one Control HS I on 30.11.1999, one vacancy on 7.12.2000, one vacancy on 22.8.2001 and one on 24th ^A august, 2001. However, respondents contend that as the vacancy which accrued in 1999, being reserved for scheduled Castes

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and all other vacancies having arisen after amendment to the Recruitment Rules by SRO 150/2000 the applicant who has crossed the age limit of 27 years is not entitled for absorption.

5. The learned counsel of the applicant argued that the upper age limit of 27 years do not apply to absorptionists, but applies only in the case of Direct Recruitment as has been held by the judgment of the Tribunal in its order in OA 94/03 and OA 653/03 after interpretation of the Recruitment Rules SRO 150/2000 and therefore the contention of the respondents are only to be rejected. The learned counsel of the respondents submitted that the respondents do not admit that the age limit does not apply for absorption and the Tribunal may take a view.

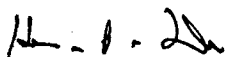
6. We have considered the rival submissions. A copy of the order of this Bench in OA 94/03 and OA 653/03 to which both of us were parties was produced for our perusal. Noting that the prescription of upper age limit of 18 to 27 years in column 6 to the schedule of the Recruitment Rules SRO 150/2000 apply only to Direct Recruitment and that promotees and absorptionists were treated alike as no period of probation is prescribed for promotees and absorptionists in column 10 this Bench set aside the impugned orders in those cases by which the names of the applicants had been deleted from the panel on the ground ^{that} they had crossed the age of 27 years. In this case also since the upper age limit of 27 years which has been further

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amended by Annexure.R.2 SRO 262/2002 to 25 years does not apply to ex-apprentices waiting for absorption but only to direct recruits the contention of the respondents that the applicant is not entitled to be absorbed is only to be rejected as untenable. Further if there is vacancy which accrued in 1999 reserved for Scheduled Castes and if none in that category is available we find that it is for the respondents to take up the matter for de-reservation and filling up by a general candidate.

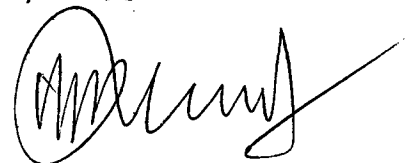
8. In the result, in the light of the above discussions we set aside Annexures.A7 and A9 and direct the respondents to consider the absorption of the applicant in her turn against the vacancy of Control Fitter (SK) as she is eligible for such absorption despite the crossing of 27 years of age which limit does not apply for absorptionists. The respondents are directed to complete the exercise as aforesaid and issue resultant orders as expeditiously as possible at any rate within two months from the date of receipt of a copy of this order. No costs.

Dated this the 6th day of August, 2004



H.P.DAS
ADMINISTRATIVE MEMEBR

s.



A.V. HARIDASAN
VICE CHAIRMAN