CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NOs. 102/2001, 177/2001 & 178/2001

THURSDAY, THIS THE 2nd DAY OF JANUARY, 2003.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

O.A. 102/2001

C.S. Ajith Kumar S/o Saravanan
Chandrassery House
Nedumbassery P.O.
Aluva. Applicant

By Advocates M/s. P. Santhoshkumar, T.A. Rajan, K.S. Salim & Luiz Godwin D'Couth

Vs.

1. Union of India represented by
the Secretary
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

4. M.X. Joy, Electrician
Naval Ship Repair Yards
Naval Base,
Kochi-4.

5. M.M. Antony, Electrician
Naval Ship Repair Yard.
Naval Base,
Kochi-4

6 R. Raghavan, Electrician
Naval Ship Repair Yard
Naval Base,
Kochi-4. Respondents

By Advocate Mr. C. Rajendran, SCGSC for R 1-3

O.A No. 177/2001

K.V. Radhakrishnan Nair
S/o Viswanathan Nair
Viswa Vihar, Kuttamperoor P.O.
Mannar, Alapuzha District. Applicant

By Advocates M/s P. Santhoshkumar & T.A Rajank

Vs

1. Union of India represented by
the Secretary
Ministry of Defence
New Delhi.

2. The Flag Officer Commanding-in-Chief
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6 R. Raghavan, Electrician
Naval Ship Repair Yard
Naval Base,
Kochi-4. Respondents

By Advocate Mr. C. Rajendran, SCGSC for R 1-3

O.A. 178/2001

1. K.N. Ajayakumar
S/o Nanappan
Karappalliparambil
Thekkumbhagam
Tripunithura

2. V. Abhilash
S/o Vivekanandan
Venkuklam, Edava P.O.
Thuruvananthapuram. Applicants

By Advocates M/s. P. Sankthoshkumar & T. A. Rajan

Vs.

1. Union of India represented by
the Secretary
Ministry of Defence
New Delhi.

2. The Flag Officer Commanding-in-Chief
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6 R. Raghavan, Electrician
Naval Ship Repair Yard
Naval Base,
Kochi-4.

Respondents

By Advocate Mr. C. Rajendran, SCGSC for R 1-3.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As the issues involved in these three Original Applications are similar these Original Applications were heard together and are decided by this common order.

2. For the purpose of convenience the detailed pleadings of O.A. 102/2001 are discussed to decide the issue involved

O.A. 102/2001

3. The applicant filed this O.A. aggrieved by A8 order No. CS 2765/33 dated 23.01.2001 and order No. 2765/34 dated 24.1.2001 of the 2nd respondent by which his representation for appointment as Electrician was regretted and respondents 4 to 6 were promoted and appointed as Electrician respectively. He sought the following reliefs through this O.A.:

(i) declare that the action of respondents to till up the existing vacancy of Electrician (Skilled) by promoting semi-skilled worker as illegal.

(ii)declare that the applicant is entitled to be considered for appointment to the post of Electrician (Skilled) in preference to junior Ex-Naval Apprentices and the employees in the lower grade.

(iii) direct the respondents to fill up the existing vacancy of Electrician (Skilled) in accordance with Annexure A3 Recruitment Rules duly considering the applicant.

(iv)set aside Annexure A8 order to the extent it denied consideration of the applicant for appointment in one of the four vacancies filled up after Annexure A7 Recruitment Rules.

(v) set aside order NO. CS 2765/34 dated 24.1.2001 of the 2nd respondent to the extent it promotes respondents 4 to 6 to the post of Electrician (Skilled).

(vi) declare that the promotion of respondents 4 to 6 the post of Electrician (Skilled) in preference to the applicant as illegal.

(vii)direct the respondents 1 to 3 to appoint the applicant to the post of Electrician (Skilled) from the date of promotion of respondent 4 to 6 with all consequential benefits.

(viii) grant such other further reliefs as may deem just, fit and proper by this Hon'ble Tribunal in the facts and circumstances of the case.

(ix) Award costs and incidental to this application.

4. According to the applicant's averment in the O.A. he is an ITI certificate holder in the trade of Electrician who had undergone apprenticeship training in the Naval Ship Repair Yard, Kochi in the trade of Electrician from 3.10.1989 to 30.9.1990. According to him as per Naval Headquarters letter CP(SC)2889 dated 30.9.1981 dated 30.9./1981 and A3 Recruitment Rules SROs 338 S3 dated 19.11.1979 and amended by SROs 131/84, 25/87 and 200/89, the Ex-Naval Apprentices were to be given priority in regular appointment. He claimed that there were two vacancies of Electrician under the respondents and to fill up those vacancies, call letters were issued to two ex-Naval Apprentices M/s Reji Thomas and Soman Elamparambath. While Sri Reji Thomas appeared before the 3rd respondent for medical examination and he was appointed, as the other person declined the offer his name was removed from

the waiting list of ex-naval apprentices for appointment. The next naval apprentice Sri N.A. Poulose had also given a letter expressing his unwillingness for appointment to the post of Electrician (Skilled). Accordingly his name was also removed from the waiting list. Applicant submitted that he was the next ex-naval apprentice to be considered for appointment in the existing vacancy of Electrician (Skilled). However no call letter was issued to him. Hence he submitted A5 representation to the 2nd respondent requesting to consider him in the existing vacancy of Electrician (Skilled) which was followed up by reminder dated 11.1.2001. He came to know that respondents were taking steps to fill up the vacancies by promoting the employees in the lower grade (semi skilled workers). Alleging that the action of the respondents were against Recruitment Rules he approached this Tribunal by filing the O.A. On receipt of the respondents' reply statement stating that the Recruitment Rules of Electrician (Skilled) were revised by SRO 150/2000 in supersession of Recruitment Rules of 1979 and that there was a further direction from the Naval Headquarters to fill up designated trade by applying the ratio 60:40 i.e. 60% were to be filled by absorption of ex-naval apprentices and 40% by promotion of qualified departmental candidates, applicant amended the OA and submitted that even as per A7 revised Recruitment Rules he was entitled to be appointed against one of the existing vacancies. Alleging that A8 order to the extent it denied consideration and appointment of the applicant against 4 vacancies and promotion of the respondents 4 to 6 to the post of Electrician (Skilled) as arbitrary, unjust and illegal, he filed this O.A. seeking the above reliefs.

5. Respondents filled reply statement. According to them mere occurrence of vacancies was not the only criterion to fill up the post of Electrician (Skilled). It was submitted by them that the Naval Headquarters informed the respondents that the Recruitment Rules of Electrician (Skilled) were revised in supersession of Recruitment Rules, 1979 with a further direction to fill up the designated trades by applying the ratio of 60:40 by absorption of Ex-apprentices and promotion of qualified Departmental candidates. It was submitted that during the period from 1997 to 1999 the necessity of filling up vacancies of Electrician (Skilled) did not arise even though 7 vacancies arose during the said period. Action was taken to fill up 3 general vacancies to this trade. Accordingly S/Shri P.X. Martin, Sali K. George and C.U. Ullasan were called for pre-appointment formalities i.e. medical examination and verification of character and antecedents. Fourth vacancy was on reserved point for SC and there was no SC candidate available for absorption. Subsequently it was decided to fill up 2 more vacancies and the next senior most 2 apprentices in the waiting list viz. S/Shri Soman Elaparambath and Regi Thomas were called for pre-appointment formalities. However, Shri Soman Elaplarambath did not turn up for medical examination and tendered his unwillingness to accept the post. Shri N.A. Poulose the next candidate also expressed his unwillingness to accept the post. After him the applicant was the seniormost ex-Naval Apprentice to be considered for the post. Naval HQ by R-2(c) letter dated 1.12.99 intimated that the Recruitment Rules of Tradesmen had been revised and directed the second respondent to plan future recruitment in accordance with the revised Recruitment Rules. The revised Recruitment Rules fixed 60:40 ratio for absorption and promotion respectively. He claimed that 7

vacancies which existed in the trade were accordingly filled up as per the revised Recruitment Rules. Hence the 7 vacancies which existed in the trade of Electrician (Skilled) were accordingly filled up as per Government direction, 4 vacancies by absorption and 3 vacancies by promotion of semi-skilled workers including one SC candidate who had qualified in the departmental qualifying test for the post which was strictly in accordance with the revised recruitment rules in force. Hence the action taken to fill up 40% of the vacancies by promotion of Semi Skilled workers was not arbitrary, unjust or illegal. They resisted all the grounds raised by the applicant and submitted that the O.A. was liable to be dismissed. They submitted that A3 Recruitment Rules ceased to exist from December, 1999 and they were directed to follow the revised Recruitment Rules which had the approval of the Ministry by that time. As the pre-appointment formalities of the candidates had not been completed the 3rd respondent had to follow the revised Recruitment Rules fixing percentage 60:40 for absorption and promotion respectively and fill up the then existing 7 vacancies by absorption of 4 ex-Naval apprentice and promotion of 3 qualified/eligible departmental candidates including 1 SC candidate.

6. Heard learned counsel for the parties.

7. Learned counsel for the applicant took us through factual averments contained in the O.A. According to him respondents were bound to fill up the existing vacancies in accordance with the Recruitment Rules in force at the relevant time. He submitted that when four vacancies of Electrician (Skilled) arose and 3 of them were filled up by following A3 Recruitment Rules by appointing M/s P.X.

Martin, Saji K. George and C.U. Ullas as per A9 order dated 27.3.2000, the subsequent vacancies of Electrician (Skilled) which arose under the respondents for which action had been initiated to fill up the same by appointing the next three seniormost Ex Naval apprentice and when the persons senior to the applicant had expressed unwillingness for appointment, not considering the applicant despite his representation was arbitrary and illegal. According to him the said two vacancies occurred prior to implementation of the A7 Recruitment Rules. He relied on the judgment of the Hon'ble Supreme Court in Y.Y.Rangaiah and Others Vs. J. Sreenivasa Rao and Others (AIR 1983 SC 852) in support of his submissions.

8. The learned counsel for the respondents reiterated the points made in the reply statement.

9. We have given careful consideration to the submissions made by the learned counsel for the parties and rival pleadings and have also perused the documents brought on record.

10. In our view the issue to be decided in this case is whether the respondents action in filling up the three vacancies by respondents' 4 to 6 by promotion as per the revised Recruitment Rules is in order or not.

11. We find from A9 order dated 27.3.2000 that S/Shri P.X. Martin, AJI K. George and C.U. Ullas ex-naval apprentices were appointed by the said letter. We also find from A4 that Shri N.A. Poulose the immediate senior to the applicant had expressed his unwillingness to be considered for appointment as Electrician by his representation dated

6.10.2000. There is no dispute that the applicant is the next seniormost ex-Naval Apprentice to be considered for appointment as Electrician (Skilled). So it is clear from the above that the applicant's right for consideration against one of the vacancies of Electrician accrued only from 6.10.2000. As against this the revised Recruitment Rules (Annexure A7) had come into force w.e.f. 1.6.2000. According to the revised Recruitment Rules column 11 indicates the " Method of recruitment whether by direct recruitment or by absorption or by promotion or by deputation or transfer and percentage of the posts to be filled by various methods" as 60% of the posts by absorption of Ex-Naval Apprentices of Designated Trades and 40% by promotion failing which by direct recruitment. As against this in A3 the earlier recruitment rules column 11 provides "Method of recruitment whether by direct recruitment or by promotion or by deputation or transfer and percentage of vacancies to be filled by various methods". What we find from the two Recruitment Rules is that whereas as per A3 Recruitment Rules the percentage were decided on the basis of the vacancies which were proposed to be filled up, as per the revised Recruitment Rules, the percentage were on the number of posts. Thus from 1st June, 2000 60% of the posts were to be filled up by absorption. When such is the case, in our view, as till 1.6.2000 the Recruitment Rules did not provide for filling up of vacancies by promotion and all the posts were to be filled up by ex-Naval Apprentices, until such time the ratio of 60:40 between ex-Naval Apprentices and promotees

are reached the vacancies were only to be filled up by promotion. In this view of the matter we hold that the respondents action in filling up the three vacancies of Electrician (Skilled) by R-2(d) order dated 24.6.2001 could not be faulted.

12. The judgment of the Hon'ble Supreme Court relied on by the learned counsel for the applicant will not have any applicability in the facts and circumstances of the present case as in that case the Hon'ble Supreme Court was referring to the vacancies and considering the question of filling of them on the basis of the relevant Recruitment Rules. Further in this particular case as already observed by us applicant's right for consideration occurred only after the new Recruitment Rules have come into force and at that time the method of filling up was on the basis of percentage of posts and not on the basis of percentage of vacancies.

13. Apart from the above the second and third respondents are bound to carry out the directives issued by the first respondent and the Naval Headquarters. The said respondents had relied on R2(c) letter dated 1.12.99 for the action taken by them. This letter is not under challenge in this O.A. As long as this letter is not under challenge and the respondents 2 and 3 were acting in accordance with the said letter their action of filling up the posts by promotion could not be faulted.

14. In Annexure A8 letter the applicant's representation dated 11.1.20001 has been considered and the applicant had been replied stating that he would be considered against future unreserved vacancies in the direct recruitment quota as and when they occur in future. As held by us we do not find any infirmity in this letter which requires interference by this Tribunal.

15. In the result we hold that the applicant is not entitled for any of her reliefs sought for. Accordingly this O.A. is liable to be dismissed. We do so accordingly.

O.A. 177/2001

16. The applicant in this O.A. is also a ex-Navy Apprentice. He sought the following reliefs through this O.A.

> i)call for the records leading to the issuance of order No. CS 2765/34 dated 24.01.2001 of the 2nd respondent and set aside the same to the extent it promotes the respondents 4 to 6 to the post of Electrician (Skilled)
>
> (ii)declare that the promotion of respondents 4 to 6 to the post of Electrician (Skilled) in preference to the applicants as illegal:
>
> (iii)declare that the applicant is entitled to be considered for appointment to the post of Electrician (Skilled) in preference to Junior Ex-Naval apprentices and the employees in the lower Grade.
>
> (iv) direct the respondents 1 to 3 to fill up the seven vacancies of Electrician (Skilled) arose in 1999 in accordance with Annexure A2 Recruitment Rules duly considering the applicant.
>
> (v) direct the respondents 1 to 3 to appoint the applicant to the post of Electrician (Skilled) from the date of promotion of respondents 4 to 6 to the post of Electrician (Skilled) with all consequential benefits.
>
> (vi) grant such other further reliefs as this Hon'ble Tribunal may deem just, fit and proper in the facts and circumstances of the case.
>
> (vii) award costs of and incidental to this application.

17. The main ground taken by the applicant for challenging the promotion of the party respondents is that the said action was against A3 Recruitment Rules SRO 338 dated 19.11.79 as amended by various SROs. The respondents resisted the claim by filing reply statement and advanced pleas similar to the ones in O.A. 102/2001.

O.A. 178/2001

18. Applicants two in number filed this O.A. against the promotion of respondents 4 to 6 allegedly in violation of the A5 Recruitment rules, SRO 338 dated 19.11.79 as amended by SROs 131/84, 25/87 and 200/89. They sought the following reliefs through this O.A.

> i)call for the records leading to the issuance of order No. CS 2765/34 dated 24.01.2001 of the 2nd respondent and set aside the same to the extent it promotes the respondents 4 to 6 to the post of Electrician (Skilled)
>
> (ii)declare that the promotion of respondents 4 to 6 to the post of Electrician ()Skilled) in preference to the applicants as illegal:
>
> (iii)declare that the applicant is entitled to be considered for appointment to the post of Electrician (Skilled) in preference to Junior Ex-Naval apprentices and the employees in the lower Grade.
>
> (iv) direct the respondents 1 to 3 to fill up the seven vacancies of Electrician (Skilled) arose in 1999 in accordance with Annexure A2 Recruitment Rules duly considering the applicant.
>
> (v) direct the respondents 1 to 3 to appoint the applicant to the post of Electrician (Skilled) from the date of promotion of respondents 4 to 6 to the post of Electrician (Skilled) with all consequential benefits.
>
> (vi) grant such other further reliefs as this Hon'ble Tribunal may deem just, fit and proper in the facts and circumstances of the case.
>
> (vii) award costs of and incidental to this application.

19. Respondents filed reply statement resisting the claim of the applicant on pleas similar to one raised in O.A. 102/2001.

20. In the light of our finding in O.A. 102/2001 wherein we had held that the applicant in that O.A. who was the seniormost ex-Naval Apprentice was not entitled for the

reliefs sought for, the applicants in these two Original Applications who are junior to him are also not entitled for the reliefs sought for.

21. In the result we dismiss these three Original Applications leaving the parties to bear their costs.

Dated the 2nd January, 2003.

Sd/-
K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sd/-
G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

CERTIFIED TRUE COPY
Date .....

Deputy Registrar