

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.197/2000

Tuesday, this the 5th day of September, 2000.

CORAM:

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

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.S.Vinumon,
S/o KK Sukumaran,
Kuriappilli, Nettoor.P.O.
Maradu, Ernakulam.

By Advocate Mr EM Joseph

Vs

1. Union of India,
Ministry of Defence,
New Delhi-1,
represented by the Secretary.
2. Flag Officer Commanding-in-Chief,
Southern Naval Command,
W.Island,
Cochin-4.
3. Commodore,
Chief Staff Officer(P&A),
Southern Naval Command,
W.Island,
Cochin-4.

- Respondents

By Advocate Mr Govindh K Bharathan, SCGSC

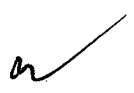
The application having been heard on 5.9.2000, the Tribunal on the same day delivered the following:

O R D E R

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

The applicant, a candidate for selection to the post of Fireman Grade-II under the 3rd respondent, was placed at 5th position in the result published on 25.3.98. Three

persons from among the list were appointed. The 4th one not having joined the post was kept vacant. At that time, finding that the applicant was not included in the list and alleging that the reservation for backward communities was not followed in the selection, the applicant filed O.A.1389/98. There was an interim direction that the filling up the vacancy of Fireman Grade-II reserved for OBC/Ezhava shall be provisional and subject to the outcome of the application. However, when the application was taken up for final hearing, as the counsel of the applicant submitted that it would be sufficient if the applicant is permitted to submit a representation to the 3rd respondent for redressal of his grievance and to direct the 3rd respondent to pass appropriate orders on his representation within a reasonable time, the application was disposed of accordingly. Pursuant to the above, the applicant made a representation but the respondents did not dispose of the same within the time stipulated. However, after a petition under the Contempt of Courts Act was filed, the impugned order dated 9.2.2000 A-5 has been issued by the 3rd respondent rejecting the claim of the applicant on the ground that there was no reserved vacancy for OBC and that the applicant having been informed of his non-selection in August, 1998 itself, the vacancy which remained unfilled on account of the death of the person placed at Sl.No.4 in the select list would be filled up and the applicant, if he applies, would be considered condoning the delay in making the application. The case of the applicant is that as he was NO.5 in the list,



the vacancy at 4th position should have been offered to him as the 4th person in the select list expired. Therefore the applicant has filed this application for setting aside the impugned order and for a direction to the 2nd respondent to appoint him to the post of Fireman Grade-II forthwith in one of the existing vacancies.

2. Respondents resist the claim of the applicant. It is contended that on account of the enhancement of retirement age from 58 to 60 there was a shrinkage in the number of vacancies, that is instead of 10 anticipated there were only 4 vacancies, that as the applicant was No.5 in the merit list, he was informed by a letter dated 5.8.98 R-3-B that he had not been selected, that the person at Sl.No.4 in the merit list was given time to join on his request till November, 1999 and that as he died, the post has now been notified for being filled up. The respondents contend that as the applicant was not a person selected and placed in the panel, he has no right to claim appointment and is only entitled to a consideration for selection if he applies.

3. We have carefull gone through the materials placed on record and have heard the learned counsel on either side. On going through the records it was disclosed that the applicant does not have any valid right to claim appointment as Fireman Grade-II. He was not placed in the panel. By R-3-B dated 5.8.98, the applicant was informed of his non-selection. If the applicant's had name was placed in the panel or even in

the reserve list, probably, he could have claimed that as the person placed just above him did not join, he should be offered appointment on that post. In this case, that is not the situation. The applicant was not selected and placed in the panel and he was informed of non-selection as early as on 5.8.98 and the applicant did not challenge the order of his non-selection. Though the applicant filed O.A.1389/98, he chose to withdraw the same with liberty to make a representation to the 3rd respondent. Learned counsel of the applicant stated that even on the date on which the O.A.1389/98 was disposed of, the respondents could have made the position clear that they had decided to fill up the vacancy by making a fresh selection and that having not done and having delayed disposal of the representation, the respondents cannot now be heard to contend that the applicant has no right to be appointed. We do not find any merit in this argument. The applicant who participated in the selection and was not selected against the vacancies, is not entitled to claim appointment.

4. In the result in the light of what is stated above, the application is dismissed, leaving the parties to bear their own costs.

Dated, the 5th of September, 2000.


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

trs

LIST OF ANNEXURES REFERRED TO IN THE ORDER:

- A-5: True copy of the order No.CS.2700/32 dt.9.2.2000 issued by the 3rd respondent to the applicant.
- R-3-B: Photo copy of the letr. No.CS 3131/44 dt.38.98 of the Southern Naval Command and annexure.