

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.208/98

Thursday, this the 10th day of February, 2000

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HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.V. Pratab Singh,
S/o K.K. Viswanathan,
Residing at Anila Nivas,
Kulasekharamangalam P.O.,
Vaikom, Kottayam District.

Applicant

By Advocate Mrs Lakshmi Jaysankar.

Vs.

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

Respondents

By Advocate Mr Govindh K. Bharathan, Sr.CGSC.

The application having been heard on 10.1.2000, the
the Tribunal delivered the following on 10.2.2000.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicant seeks to declare that non-consideration of him
for the post of Radio Mechanic is illegal, that post based
roster, R2(E) is unconstitutional, to direct respondents to
prepare a post based roster according to the stipulation
contained in their own circular, and to absorb him in one of the
existing two vacancies of Radio Mechanics.

2. Applicant says that he is fully qualified to be posted as a Radio Mechanic. He has undergone apprenticeship at Naval Ship Repair Yard, Kochi. Ex-Naval Apprentices are to be given priority in regular appointment. After completion of the training there were 7 vacancies. Applicant underwent medical check up. Along with him various other persons also underwent medical check up and police verification. 5 persons have been given appointment. He submitted a representation. No action is taken for giving him appointment as Radio Mechanic. Persons with lesser marks have been appointed already. Towards the two unfilled vacancies, he could be appointed. 14th post, as per Appendix to Annexure IV in A7 dated 2.7.97, is to be kept for ST.

3. In the reply statement filed by the respondents it is contended that the applicant is eligible to be considered for appointment to the post of Radio Mechanic (Skilled) subject to availability of vacancy. In the particular trade of Radio Mechanic (Skilled) there was only one vacancy which was reserved for SC. One SC candidate is available. The applicant was called for finalising the pre appointment formalities against a reserved vacancy for ST in the trade of Radio Mechanic as per vacancy based roster. Vacancy based rosters are replaced by post based rosters. As per post based rosters, no ST vacancy exists in the post of Radio Mechanic (Skilled). 5 other persons who were given regular appointment against vacancies that occurred in their respective trades. Applicant is the

juniormost in the waiting list of Ex-Apprentices in the trade of Radio Mechanic (Skilled). His representation has been disposed.

4. A rejoinder has been filed stating that the number of posts and ratio of the roster has not been mentioned in the reply statement. In the absence of the same, it is not discernible whether any ST candidate has been accommodated so far and what is the ratio set apart for ST.

5. In the additional reply statement it is stated that 14 posts of Radio Mechanics have been sanctioned and 13 posts have been filled. The number of posts earmarked for general candidates, SC/ST and OBC as per post based roster prepared by the 2nd respondent are:-

(a) General	10
(b) OBC	3
(c) SC	1

No SC candidate has been given appointment as against SC point and thus that vacancy has been kept unfilled. The applicant being a ST candidate cannot be considered against SC vacancy for the present. As per roster point, ST point fixed is at 98 since the reservation for ST fixed by the Government in Kerala is one per cent. The model roster for 13 posts for direct recruitment is not applicable in the instant case, since the same is made as per 7 1/2% reservation for ST.

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6. In the additional rejoinder filed, it is stated that as per the stand of the respondents, the applicant's chance once for all is closed unless the sanctioned posts come to 98 posts which is unlikely.

7. Though it is not stated in the O.A. that the applicant belongs to ST community respondents have stated clearly that the applicant's eligibility is towards the ST Quota. Arguments were advanced by the learned counsel on both sides on the basis that the applicant is ST candidate.

8. The case is to be viewed in the light of R.K. Sabharwal and Ors. Vs. State of Punjab and Ors. [JT 1995 (2) SC. 351]. As per Sabharwal's case, percentage of reservation has to be worked out in relation to the number of posts which form a Cadre strength and concept of 'vacancy' has no relevancy in operating the percentage of reservation. It is undisputed that number of posts are 14 for trade of Radio Mechanic (Skilled). There is also no dispute that for recruitment on regional basis within Kerala, the percentage of reservation is one for ST. So, the admitted position is that the applicant being ST candidate, the percentage of reservation available is only one in this case.

9. On this basis in the instant case the number of post reserved for ST come to 0.14. According to the applicant, since most of the Central Government Organisations do not have 50 posts or above in different categories on the basis of 1 point

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reservation for ST, it will be permanently closing the chance for ST in Kerala to enter into Central Government jobs. The interpretation could only be in accordance with the rules. It could only be guided by reason and not by humour. Only after taking into consideration of all aspects as far as Kerala is concerned, it is fixed that the reservation for ST is only one percentage. On the ground that on the basis of reservation provided is one percentage, that will cause heartburn to the applicant, an order cannot be passed in favour of the applicant. According to the respondents, the turn of the ST will arrive at only on the 98th point. Based on the percentage of reservation and the post based roster, it is correct also.

10. The applicant was called for pre-appointment formalities at a time when vacancy based roster was in existence. Subsequently that has been changed. Now it is post based roster. In the model roster where the cadre strength is 13, the 14th point is shown as ST's turn. But it is to be remembered that it is so shown taking the share of entitlement of ST as 7.5 percentage. As far as Kerala is concerned, it is not so as admittedly it is only one percentage.

11. In R.K. Sabharwal's case it has been held by the Apex Court that the only way to assure equality of opportunity to Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster.



12. In J.C. Malik and others Vs. Union of India and others [1978(1)SLR 844] a Division Bench of the Allahabad High Court held that the percentage of reservation is in respect of the appointment to the post in a cadre. In Sabharwal's case the Apex Court has observed that there is no infirmity in the view taken by the High Court.

13. One of the prayers is to quash R2(E). The attack against R2(E) is that Appendix to Annexure IV in A7, the Model roster shows that the 14th post is to be kept for ST and this has not been done in the post based roster R2(E). The applicant's contention on this ground cannot be accepted for a moment for the reason that Appendix to Annexure IV in A7 is on the basis of 7.5 percent share of entitlement for ST. As already stated, as far as Kerala is concerned, it is only one percentage and R2 (E) is prepared on the said basis of percentage of reservation for ST in Kerala. Hence the stand of the applicant that in the light of Appendix to Annexure IV in A7, R2(E) is to be quashed cannot be accepted.

14. With regard to the case of the applicant that those who have obtained less marks than him have been appointed, it is clearly seen from A4 that they have been appointed to various trades other than Radio Mechanics(Skilled).

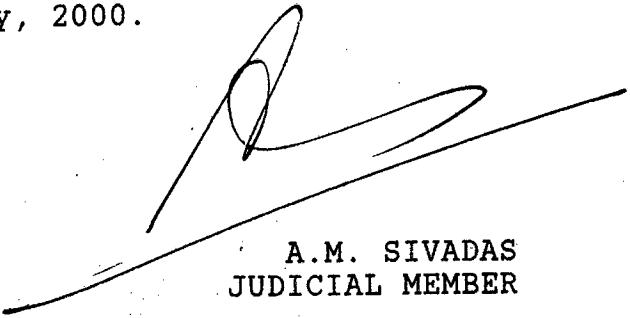


15. We do not find any merit in this O.A. and this O.A. is accordingly dismissed.

Dated the 10th of February, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES REFERRED TO IN THE ORDER

A4, True copy of appointment order of Industrial Staff vide No.C.S.4127/44 dated 9.9.97 of the Chief Staff Officer (P&A), Southern Naval Command, Kochi-4.

A7, True copy of Office Memorandum No.36012/2/96-Estt.(Res) dated 2.7.97 of the 1st respondent vide CS 1065/44 dated 22.10.97 of the Director, Headquarters, Southern Naval Command, Kochi-4.

R2(E), True copy of the Table showing the Model Roster of Reservation with reference to post for Direct Recruitment.