

# CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 264 OF 2007

Dated the 25<sup>th</sup> August, 2008

CORAM:-

HON'BLE Dr. K.B.S. RAJAN, MEMBER (JUDICIAL)  
HON'BLE Dr. K.S. SUGATHAN, MEMBER (ADMINISTRATIVE)

P.L. Kochumary,  
W/o Yesudasan, aged 52 years,  
Radio Mechanic (Skilled),  
Directorate of Installation in Naval Training,  
Naval Base, Kochi.

.. Applicant

[By Advocate: Mrs Sumathi Dandapani, Sr, Mr Millu Dandapani,]

-Versus-

1. Union of India,  
Represented by the Secretary,  
Ministry of Defence, Central Secretariat,  
New Delhi.
2. The Flag Officer Commanding-in-Chief,  
Southern Naval Command, Naval Base,  
Kochi.

... Respondents

[By Advocates: Mr. TPM Ibrahim Khan, SCGSC, Ms. Jisha]

This application having been heard on 30th July, 2008 the Tribunal delivered the following -

## ORDER

[Hon'ble Dr. KS Sugathan, M(A)]

The applicant in this OA was appointed as a Radio Mechanic (skilled) by order dated 13.6.1988. The terms of appointment specified that it is on casual basis. Initially the appointment was

for a period of 3 months, but it was continued up to 3.11.1990. Thereafter, the services of the applicant were terminated. The applicant has since been agitating for her regularization through a number of OAs filed in this Tribunal as well as in Higher judicial forums. The present OA is filed challenging the non-consideration of the representation submitted by the applicant on 24.11.2005. The said representation was submitted in pursuance to the judgment of the Hon'ble High Court of Kerala in OP No. 7927/2000 dated 22.9.2005. The applicant has contended that the respondents are trying to regularize two other candidates in the available vacancies, instead of considering her claim. She has, therefore, prayed for the following relief:

- " i) Call for the records leading to the case,
- ii) direct the 2<sup>nd</sup> respondent to consider and regularize the applicant herein towards the vacancy that has arisen in the post of Radio Mechanic in accordance with law;
- iii) to direct the 2<sup>nd</sup> respondent not to fill up the vacancy arisen in the post of Radio Mechanic without first considering the applicant herein;
- iv) to direct the 2<sup>nd</sup> respondent to consider and dispose of A7 representation submitted by the applicant herein in pursuance to the direction in A6 judgment of the Hon'ble High Court of Kerala;
- v) pass such other orders and directions as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."

**[2]** The respondents have contested the OA. In the reply statement, they have taken the stand that the claim of the applicant for regularization had been considered by this Tribunal in OAs 731/91, 878/99, 1358/95 and 740/99 but the claim was

found to be unsustainable in law and facts. Hence the present OA is hit by res judicata. According to the Recruitment Rules for the post of Radio Mechanic the method of recruitment prescribed is by absorption of ex-naval apprentices, failing which by promotion and failing that by transfer and failing both by direct recruitment and failing all by transfer on deputation/re-employment of Ex-servicemen (R/1). The said Recruitment Rules have been amended in 2000 and 2002 wherein the method of recruitment has been modified as 90% by absorption of ex-naval apprentices of non-designated trades and 10% by promotion failing which by direct recruitment. Large number of ex-apprentices, who are eligible for consideration to the post of Radio mechanic are waiting for appointment. The applicant is not an ex-naval apprentice. No fresh ground has been cited by the applicant. All the grounds have been answered on the previous occasions. The applicant was appointed in 1988 against short term vacancies to meet the operational requirements. It was a casual appointment with no guarantee for continuation or regularisation. Eight out of the 16 casual employees were regularised. Others could not be regularised for want of vacancies. Earlier OAs were dismissed. The findings of the Tribunal was challenged in the Hon'ble Supreme Court. But the apex Court did not interfere with those findings. As regards A/7 representation, there were no fresh grounds in that. There was also no specific direction by the Hon'ble High Court for disposing of the said representation. Hence it was not disposed of. The ex-naval apprentices are having a superior claim over the



applicant according to rules. The proposal to appoint the senior most ex-naval apprentice is in accordance with the rules.

[3] We have heard the learned counsel for the applicant Mr. Millu Dandapani and the learned counsel for the respondent Shri TPM Ibrahim Khan. We have also perused the documents carefully.

[4] The subject matter of this OA has been considered by this Tribunal in OA No. 1358 of 1995. The Tribunal in its order dated 11.11.1997 had observed as follows:

"3. The issue before us is purely factual and relates to determination of whether there are any vacancies and if so, how many. The Tribunal in OA 1728/94 and in OA 1743/94 found that there were clearly more than three vacancies and therefore, the applicants in those OAs can be regularized. The applicants had represented to the respondents and the respondents while rejecting their claim by A-5 impugned order dated 30.8.95 have stated:

"Hon'ble Supreme Court have not ordered to fill up the past and future vacancies. The vacancy position of regular Radio Mechanics under Southern Naval Command as on 1987 and on 8, March 95 is as under:

| 1987-1989        | Sanctioned | Borne |
|------------------|------------|-------|
| Radio/Radar HS-1 | 10         | 10    |
| " " HS-II        | 18         | 18    |
| " " (SK)         | 11         | 11    |


There is no change in the number of vacancies of SK in Naval Ship Repair Yard, Kochi."

Applicants contended that these figures do not tally with the figures of vacancies given by the respondents in the reply statement at para 8. We consider that this is essentially a matter to be gone into by the respondents. "

[5] The Tribunal had also directed that the respondents shall consider the representation and pass appropriate orders. Thereafter, the respondents rejected the representation of the applicant. The rejection was challenged in OA 740 of 1999. The Tribunal dismissed the OA 740 of 1999. The dismissal of OA

740 of 1999 was challenged by the applicant in the Hon'ble High Court of Kerala in OP NO. 7927 of 2000. The Hon'ble High Court while dismissing the OP No. 7927/2000 had made it clear that:

"3. There is no error in the orders passed by the Tribunal and the writ petition is dismissed. But we make it clear that because of the dismissal of the O.P. they should not be discriminated. If a representation is submitted by them within three months from today highlighting their claims, if they are similarly situated like the applicants in OA 1358/95 (Ext. P9 judgment) their claims are to be considered by the respondents, of course, subject to availability of vacancy, and without prejudice to the claim of others already in service."

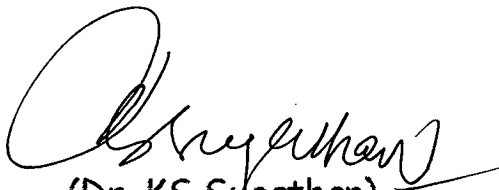


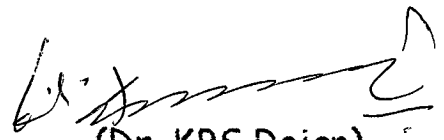
[6] The applicant is aggrieved that her representation made in pursuance to the above direction of the Hon'ble High Court has not been considered by the respondents. On the other hand, the respondents have taken the stand that as there was no new ground in the A/7 representation and as there was no specific direction by the Hon'ble High Court the representation was not disposed. It is seen from the judgment of the Hon'ble High Court that the applicants' representation highlighting their claims regarding similarly placed persons shall be considered by the respondents subject to availability of vacancy and without prejudice to the claims of others already in service. We are unable to accept the contention of the respondents that the A/7 representation was not disposed of as there were no fresh grounds. The representation should have been considered as per the direction of the Hon'ble High Court and appropriate orders

passed. Only when appropriate orders are passed after due consideration it can be said that proper consideration has been given to the representation.

[7] For the reason stated above, the OA is disposed of with a direction to the respondents to pass appropriate orders on A/7 representation after consideration of the points raised, particularly in regard to the alleged discrimination. No costs.

Dated the 25<sup>th</sup> August, 2008.

  
(Dr. KS Sugathan)  
Member (Administrative)

  
(Dr. KBS Rajan)  
Member (Judicial)

sln