



CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NoS. 28/2002 & 390/2002

Friday, this the 29th day of October, 2004.

C O R A M

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. O.A.NO. 28/2002:

M.D. Ramachandran,
'Chandra Vihar',
Chottanikkara Post,
Ernakulam : 682312.

..Applicant


[By Advocate Mr. C.J. Roy]

Versus

1. Union of India represented by the
Secretary to Government,
Ministry of Defence,
New Delhi.
2. The Vice Admiral,
Commanding-in-Chief, Headquarters,
Southern Naval Command,
Cochin - 682 004.
3. The Flag Officer-Commanding-in-Chief,
Headquarters, Southern Naval Command,
Cochin - 682 004.
4. R. Gopidas,
Mechanic (AS) (SK),
NAY, Cochin - 682 004
5. G. Ganeshan,
Mechanic (AS) (SK),
NAY, Cochin - 682 004
6. Simon Theruvil,
Mechanic (AS) (SK),
NAY, cochin - 682 004

..Respondents

[By Advocate Mr. C.Rajendran, SCGSC, for R-1 to R-3 and
S.M.Prasanth, for R-4 to R-6.]



2. O.A. No.390/2002 :

: 2 :

P.M. Shajimon,
Peralunkal House,
Kongandoor P.O.,
Kottayam.

.. Applicant.

[By Advocate M/s. Santhosh & Rajan]

v e r s u s

1. Union of India, represented by the
Secretary, Ministry of Defence,
New Delhi.
2. The Flag Officer Commanding-in-Chief,
Headquarters,
Southern Naval Command,
Kochi - 4.
3. The Staff Officer (Civilian),
Headquarters,
Southern Naval Command,
Kochi - 4.
4. V.V. Mathai,
Mechanic (Airstructural) (Skilled),
Naval Aircraft Yard,
Naval Base, Kochi - 4.
5. V.S. Haridas,
Mechanic (Airstructural) (Skilled),
Naval Aircraft Yard,
Naval Base, Kochi - 4.
6. Simon Theruvil,
Mechanic (Airstructural) (Skilled),
Naval Aircraft Yard,
Naval Base, Kochi - 4.
7. G. Natarajan,
Mechanic (Airstructural) (Skilled),
Naval Aircraft Yard,
Naval Base, Kochi - 4.
8. R. Gopidas,
Mechanic (Airstructural) (Skilled),
Naval Aircraft Yard,
Naval Base, Kochi - 4.

.. Respondents.

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

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The Original Applications No. 28/2002 and 390/2002 arise out of a common cause of action and both the applicants are similarly placed. Therefore, both these OAs are being decided by a common order by the consent of the parties.

2. Both the applicants in the above OAs are challenging the impugned orders Annexure A/9 dated 21st Sept., 2001 and 7.2.2002 respectively by which their calim for appointment to the post of Mechanic (Air Structural) (Skilled) has been rejected, though they have been empanelled for the said post under direct recruitment. This controversy has cropped up in the backdrop of the following facts:

3. The applicant in O.A. No. 28/2002 is an ex-serviceman discharged as an Air Frame Technician and Supervisor from Indian Air Force on 30.4.2001 after completion of 20 years. During his service period, he had more than six years experience exclusively on Air Craft Structural Repair on various air crafts and had acquired capability to handle the task independently. The applicant also passed Diploma Course in Mechanical Engineering and the CTTB examination (Departmental Test) as evidenced by A/4 certificate.

4. The applicant in O.A. No. 390/2002 is also an ex-serviceman. He joined in the Indian Navy as Artifler Apprentice on 30.7.1983 and had undergone the Aircraft Artifler Apprentice Course from 1.8.1983 to 31.1.1987 in the Naval Air

Technical School, Naval Base, Kochi. Annexure A/1 is the said certificate. The said Aircraft Artifier Apprentice Course is recognised at par with Diploma in Mechanical Engineering by the Government of India, Ministry of Education and Culture.

4. In response to the notifications A/5 (in OA No. 28/2002) and A/2 (in OA No.390/02) appeared in Employment News edition 10-16 June, 2000, both the applicants have applied for the post of Mechanic (Air Structural) (Skilled). As per the notification, there were six vacancies (4 general and 2 OBC). The applicants came out successful in the trade test and interview. Thereafter, the applicants received a communication dated 6.2.2001 (A/6 in OA 28/02 and A/3 in OA 390/02) requiring them to report for medical examination on 20.2.2001. But vide another communication dated 9.2.2001 (A/7 in OA No. 28/02 and A/4 in OA 390/02), the medical examination scheduled to be held on 20.2.2001 has been cancelled due to administrative reasons. Again, they were asked to report for medical examination on 5.6.2001 vide A5 communication. He was found fit in the medical examination and the police verification was also made. But the applicants were not appointed. Against this, they submitted representations. The claim of the applicants has been rejected on the ground that the action for direct recruitment for six vacancies of Mechanic (Air Structural) (Skilled) was initiated in February 2000 at a time when there were no qualified departmental candidates available for promotion and that by the time, the selection process was over, sufficient departmental candidates got qualified in the departmental qualifying test. The period of select list was for one year which expired on 24.1.2002. But in the impugned order A9 dated 21.09.2001, it was stated that four departmental

candidates were promoted against the general vacancies and the private respondents are the persons thus promoted. The action of the respondents in promoting the departmental candidates ignoring the applicants, who have been selected for the said post, is highly arbitrary, unjust and illegal. Aggrieved by this action on the part of the respondents, the applicants have filed aforesaid OAs seeking following main reliefs :

"Reliefs sought in O.A. No.28/02 :-

- (i) Declare that the vacancies notified in Annexure A5 are to be filled up by the candidates included in the select list prepared pursuant thereto and not by in-service candidates who subsequently become qualified to the post;
- (ii) Quash the appointments of in-service hands made to the posts notified in Annex.A5 overlooking the claims of the candidates selected for the posts as illegal and void;
- (iii) Direct the respondents to appoint the applicant to one among the four general vacancies notified in Annex. A5 before the expiry of the select list on 25.1.2002;

Reliefs sought in O.A. No.390/02:-

- (i) Call for the records leading to Annexure A9 and set aside the same;
- (ii) Declare that the promotion of the respondents 4 to 8 to the post of Mechanic (Air Structural) (SK) in preference to the claim of the applicant for appointment to the said post as illegal;
- (iii) Declare that the applicant is eligible and entitled to be appointed to the post of Mechanic (Air Structural) (SK) in preference to the promotion of the respondents 4 to 8 to the said post;
- (iv) Direct the 2nd and 3rd respondents to appoint the applicant to the post of Mechanic (Air Structural) (SK) from the date of promotion of respondents 4 to 8 to the said post with all consequential benefits."

5. The respondents in both the OAs have filed detailed reply statements contending that the action had been initiated to fill

up six vacancies, which include vacancies to be filled up to meet operational requirements in connection with setting up of additional facility in one of the establishments in the Southern Naval Command. As per the Recruitment Rules vide SRO 27 dated 5.1.1987 as amended vide SRO 208 dated 31.10.1990, the posts/vacancies arising in the Naval Aviation trades have to be filled up by promotion failing which by transfer on deputation/re-employment (for ex-serviceman) and failing all by Direct Recruitment. In the absence of eligible/qualified departmental candidates for filling up the vacancies as per the first clause of Recruitment Rules, the respondents had to resort to direct recruitment under failing clause and accordingly the vacancies were notified in the Employment News edition 10-16 June, 2000. It is averred that the respondents are conducting the Departmental Qualifying Tests annually as per a fixed program and departmental candidates, who qualify in these tests are considered for promotion according to their seniority and roster points subject to availability of vacancies. It is true that the trade test was conducted on 18th and 19th June, 2001 and the applicants, who applied for the post, had attended the test/interview and was selected by the Selection Board. The applicants in OAs No. 28/2002 and 390/2002 are at serial No. 3 and 2 respectively in the merit list. The six vacancies of Mechanic (Airstructural) (Skilled) were notified at a time when there was no departmental candidates available for filling up the said vacancies by promotion to the post as per the first clause in Recruitment Rules. Since qualified departmental candidates became available for prior to the finalisation of direct recruitment proceedings, the action on the part of the 2nd respondent for promoting respondents 6 and 8 is in order.

Against the six vacancies notified, only three vacancies were filled by promoting respondents 6 and 8 and also a departmental candidate. Out of remaining 3 vacancies, two were filled up by candidates who had been selected by direct recruitment alongwith the applicants. In the absence of eligible departmental candidates the two direct recruits were given appointment as one ranked top in the select list and both belonged to OBC community. As per the promotion roster, the remaining one vacancy is to be filled up by an SC candidate and a qualified SC candidate is now available. Therefore, the action of the respondents cannot be said to be faulted and the O.As deserve to be dismissed.

6. We have heard Shri C.J. Roy and M/s. Santhosh & Rajan, learned counsel for the applicants and Shri Rajendran, SCGSC, for official respondents and Shri S.M. Prasanth, learned counsel for private respondents 4 to 6 in OA No. 28/2002.

7. The learned counsel for the applicants submitted that they are eligible to be considered for the post in question and in no case, the departmental candidates should have been promoted when the selection process for direct recruitment was over. On the other hand, the learned counsel for the respondents persuasively argued that the departmental candidates were available and consider for promotion to the aforesaid post before finalisation of the direct recruitment and, therefore, there is no fault in the selection process.

8. We have given due consideration to the arguments advanced by the respective parties and have gone through the material placed on record.

9. On perusal of A2 notification (in OA 390/02), it is clear that six vacancies (general 4 and OBC 2) were notified. It is also clear that the method of recruitment is direct and no SC vacancy was shown to be notified. It is also admitted in the reply statements that since there were no departmental candidates available for the said post, the method of direct recruitment is resorted to as per the Recruitment Rules. So also, no SC vacancy was notified in the said notification. No doubt, as per the roster system, earmarking the vacancy for SC/ST at a particular point is a very important aspect constitutionally mandated. and that the department should have considered the same much earlier. Probably, it would have noticed by the department at a later stage. On going through the pleadings in the reply statement, we find that there was a mistake on the part of the respondents in not resorting to the option correctly in the matter of appointment/selection. This might be an inadvertence. However, having notified for the direct recruitment and finalised the selection by the Selection Board, the respondents are not justified in promoting the departmental candidates to the said post, ignoring the applicants.

10. On 14.10.2004, we have directed the learned counsel for the respondents to ascertain and report as to the availability of vacancies of Mechanic (Airstructural) (Skilled) in the department presently. Now, we are told that there are five more vacancies available in the department. Therefore, considering the entire aspects of the matter and taking into ^{W/consideration} the statement made by the respondent's counsel at Bar, we are of the view that in this peculiar circumstances, it will be just and proper if a direction is given to the respondents to consider the appointment of the

applicants in both the O.As in the existing vacancies without resorting to any further selection process, but subject to medical fitness. Accordingly, we set aside and quash the A9 impugned orders with a direction to the respondents to consider the appointment of the applicants in the existing vacancies without resorting to any further selection process within a period of one month from the date of receipt of a copy of this order. Further, we make it clear that the applicants' appointment will be subject to their medical fitness and other formalities as to their fitness, if any, and that their seniority will count only from the date of their joining in the post.

11. The OAs are allowed as indicated above. No order as to costs.

(Dated, the 29th October, 2004)

Sd/-

H.P.DAS
ADMINISTRATIVE MEMBER

Sd/-

K.V.SACHIDANANDAN
JUDICIAL MEMBER

cvr.