

(13)

CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 548/88  
~~Ex AxxxNxx~~

198

DATE OF DECISION 19.4.1991

Capt. Sudhir Kumar.

Petitioner

Shri G.K.Masand

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri M.I.Sethna

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C.Srivastava, Vice-Chairman,

The Hon'ble Mr. M.Y.Priolkar, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

*[Signature]*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

• Original Application No.548/88

• Capt. Sudhir Kumar.  
V/s.

.. Applicant.

The Secretary  
Ministry of Surface  
Transport, Parivahan Bhavan,  
Parliament Street  
New Delhi.

Director General of Shipping  
Jahaj Bhavan, Sir Walchand  
Marg, Bombay 400 001.

Union Public Service Commission  
Dhaulpur House, Shahjahan Road,  
New Delhi.

.. Respondents.

CORAM: Hon'ble Vice Chairman, Shri U.C. Srivastava,  
Hon'ble Member (A) Shri M.Y.Priolkar.

Appearances:

Mr. G.K. Masand, Advocate of the Applicant.

Mr. M.I. Sethna, Advocate for the Respondents.

JUDGEMENT

Dated: 19-4-1991

(Per Shri U.C. Srivastava, Vice Chairman.)

The applicant who is presently working as a Nautical Surveyor in the office of the Director General of Shipping Bombay since 1974 is claiming ~~for~~ the next promotional post i.e. the post of Deputy Nautical Advisor in the Director General of Shipping, Ministry of Surface <sup>and</sup> Transport has approached the Tribunal praying for certain reliefs ~~which according to him a promotional post~~ <sup>and</sup> has challenged the Notification issued by the UPSC on 26.3.1988 prescribing certain qualification for the ~~same~~ <sup>promotional post</sup> which are g mentioned in the Recruitment Rules 1957. In the said rule one of the qualification prescribed is the qualification of Extra Master Certificate of Competence (recognised by Government of India which qualification existed in the

Rules of 1968 also. The applicant is a Post Graduate in Maritime Safety Administration and was selected by the GOI for two years course in Maritime Safety Administration from World Maritime University, Melmo, Sweden at the expenses of the Government itself. This course of M.Sc. was passed by him in the highest grade of the University. He is said to be the only Indian in getting the degree so far, has been established at the instance of U.S.A. is the centre of High level Maritime training and effective means for the transfer of merit and technology from the development to the developing Maritime Nations. The Extra Masters course was started in this Country in the year 1954 and is conducted by the Lal Bahadur Shastri Nautical and Engineering College, Bombay, in three semesters of four months each and in parts both in various subjects.

According to the applicant he is qualified for the said post and the degree which he obtained from Sweden after two years is superior than the training given at the Nautical College, Bombay referred to above for a period of one year only. The applicant has also applied to the Respondent No.2 that his M.Sc. Degree be also recognised for the post of Dy. Nautical Advisor. The applicant has also placed reliance on the observations made by the Minister of the Department so far as the University degree of the applicant is concerned.

" ... We in India do not propose to insulate ourselves from Technological and managerial Developments taking place in this ever changing world. We must continue to learn and learn the best so that our managers and officers are comparable with those of the most advanced countries in the world. And in imparting these skills the world Maritime University has a cardinal role to play. In the days ahead, I am quite sure, India will make the utmost possible use of the facilities offered by the world Maritime University. Out of the current Batch of

two hundred students from 74 countries five are from my country. I am confident that when they return home, they will be well equipped not only to shoulder greater responsibility but also to train others to the high standards laid down by the world Maritime University. I must say, Sir, how grateful we are to this University for the assistance offered to us. In this connection, I may mention that the Government of India had decided to treat the M.Sc. Degree of this University as fulfilling the requirements of Surveyors and accepted it as the Highest technical qualification in the maritime field."

According to the applicant clause II of the Recruitment Rules provides that the selection of the Dy. Nautical Advisor <sup>is by promotion</sup> failing which by direct recruitment and he fulfills the qualification. As per his case he being fully qualified for the same, there is no occasion for not promoting him to the post. The application has been opposed by the respondents who have filed their counter affidavit to the same. This Tribunal vide its order dt. 31st March, 1989 allowed the respondents to appoint one person to the post of Dy. Nautical Advisor subject to the final outcome of this application and so far as the second post of the Dy. Nautical Surveyor is concerned the direction was that they shall not fill the post till 16.6.1969 which order was extended and continued up to 29.7.1989 it was provided in the order. "In the meanwhile respondents may take instructions from the authority as to whether they should refer the case of the applicant for relaxation of essential qualification for the post of Dy. Nautical Advisor as laid down in Shipping & Mercantile Marine Department (Class I and II), Recruitment Rules, 1968 to the DFC or the concerned Ministry." It is to be noted that UPSC is R-3 to the instant application under section 19 of the A.T.A. The powers of relaxation are provided in the statutory rules framed under Article 309 of the Constitution of India referred to above known as

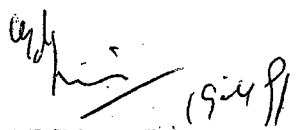
Directorate General of Shipping & Mercantile Marine  
Departments(Class I and Class II) Technical Post  
Recruitment Rules, 1968. Rule 8 of the said Rule provides  
for the power of relaxation and the same reads as under:

" Power to relax:

Where the Central Government is of the opinion that it is necessary or expedient so to do, it may ~~be~~ order, for reasons to be recorded in writing and in consultation with the Union Public Service Commission, relax any of the provisions of these rules with respect to any class or category of persons."

The learned counsel for the respondents informed that the Ministry has come to the conclusion that it was not necessary to relax the qualification and the qualifications cannot be relaxed. Without entering into other questions raised in this application, the case can be disposed of only at this stage on the question of relaxation itself. The UPSC being a party to the application obviously it could not have been excluded. The communication of the Tribunal by its Interim Order was obviously to include the UPSC in the matter <sup>of relaxation</sup> ~~as~~ which is a requisite conditions of the Rule referred to above. The order of the Tribunal could not have been read as excluding something which the statutory rules provide. Under the rules the UPSC should also have been consulted, but apparently it has not been consulted and without it the question of relaxation has been disposed of by the Ministry. In these circumstances the application deserves to be allowed and the respondents 1 and 2 are directed to refer the matter of relaxation in the qualifications as stated by the applicant taking into consideration also his experience,

qualifications, the degrees and the factum that the GOI has sent him for education and other relevant considerations as well as <sup>the</sup> fact that previously also relaxations have been granted, may be prior to the establishment of Engineering College at Bombay referred to above. Let a decision to be taken after consulting UPSC within two months from the date of communication of this order. There will be no order as to costs.

  
(M.Y. PRIOLKAR)  
MEMBER (A)

  
(U.C. SRIVASTAVA.)  
Vice-Chairman.