

THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 42/99 & 115/99

OA-115/99

Dated this the 21st day of June, 1999

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

OA.NO. 42/99

Ravindra B. Rane,
2/10, Sahyadri Co-operative
Housing Society, Sahyedri
Nagar (Cuerry Road),
Bhandup (West), Mumbai.

OA.NO. 115/99

Rajesh R. Nikam
A/10, "Aruna Aarti Society",
Old Belapur Road, Opp.
Post Office, Kalua, Dist.
Thane.

By Advocate Shri M.S.Ramamurthy

... Applicants

V/S.

1. Union of India
through the Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. Flag Officer Commanding-in-
Chief, Headquarters,
Western Naval Command,
Shahid Bhagatsingh Road,
Mumbai.
3. Senior Staff Officer,
(Civilian Personnel),
Office of FOC-in-C,
Headquarters,
Western Naval Command,
Shahid Bhagatsingh Road,
Mumbai.

By Advocate Shri V.S.Masurkar

... Respondents

ORDER

(Per: Shri D.S.Baweja, Member (A))

These two OAs. have been heard together
and are being disposed of by a common order as
the facts involved are identical, the relief
prayed for is the same and the same question
of law is involved.

2. The applicants in both the OAs, have stated their case as follows :-

In the year 1993, the Headquarters Western Naval Command called for candidates from the Regional Employment Exchange, Mumbai for selecting suitable candidates for the post of Assistant Storekeepers. The names of the applicants were sponsored by the Employment Exchange. The applicants appeared in the written examination and after being successful in the same, they were called for interview. The applicants submit that as per their understanding, a select list of 25 candidates was finally drawn up and the names of the applicants figure at Sl.No.12 (OA.42/99) and Sl.No. 23 (OA.115/99). The respondents started making appointments from the select list from May, 1994^{onwards} and 3 appointments were made. Thereafter, some appointments were made in July, 1995, August, 1995, May 1996, March 1997 and October 1997. It is further contended that the appointments were being made from the panel as and when vacancies were released by Naval Headquarters but the respondents were not making appointments strictly in order of merit in the select panel. The applicant in OA.NO. 42/99 has averred that though his name is at Sr.No. 12, the candidate appearing at Sr.No. 22 has been given appointment ignoring his case. It is further added that one candidate named Pradeep H.Bhalerao who is reported at Sr.No. 16 in the panel had made a representation and he was replied as per letter dated 27.1.1997 that his name is on waiting list and the matter with regard to appointment of those who ^{are} on the waiting list has been forwarded to the Naval

Shri

Headquarters. It is further stated that Bhalerao
subsequent to this letter ^{was} given appointment
also. This shows that the respondents have been
operating the panel till recently. The applicants
have been making representations from time to time
but they have been not given appointments so far.
The applicants have further submitted that 10 more
vacancies of Assistant Store Keepers were released
in April, 1998 against which fresh recruitment is
proposed to be made. The applicants made a represen-
tation against the same on 19.9.1998 followed by
several reminders that there is no justification
of filling of the 10 vacancies as the candidates
from the earlier panel are still available waiting
for appointment. Feeling aggrieved, the present
DAs. have been filed on 13.1.1999 (DA.42/99) on
17.2.1999 (DA.115/99) seeking the following reliefs :-
(a) to direct respondents not to undertake fresh
recruitment to fill up the 10 vacancies till the
applicants are appointed as Assistant Store Keepers.
(b) to direct the respondents to appoint the applicants
as Assistant Store Keepers against the vacancies.

3. The applicants have advanced the following
grounds in support of their case. (a) The respondents
have been appointing the candidates from the panel
from time to time over the last 4 years which indicated
that select list was not operated only in respect of
the original vacancies of any particular year but the
appointments were made against the subsequent vacancies
also. In view of this, there is no reason why the
applicants cannot be appointed from the panel before
going in for any fresh recruitment. (b) The respondents

have not followed the merit order in offering the appointment to the candidates. (c) Any denial of appointment to the applicants at this stage will mar their whole future as they cannot compete for any Government job at this stage due to being overaged.

4. The respondents have filed the written statement. The respondents have submitted that in 1993, 12 vacancies of Assistant Store Keeper were released by Flag Officer Commanding-in-Chief, Headquarters Western Naval Command being the Cadre Controlling Authority. Out of these 12 vacancies, were 6 for General candidates and 3 each for SC and ST. For filling up these vacancies, a notification was sent to the local Employment Exchange to sponsor suitable candidates. Based on the candidates nominated, a panel of 25 candidates was finalised after holding the selection. It is admitted that applicant in OA.No. 42/99 is at Sr.No. 12 and in OA.No. 115/99 is at Sr.No. 23 of the select list. The respondents further submit that 12 candidates as per the break-up for the various categories from the panel were offered appointment and therefore the action in operation for panel to that extent had been completed. However, subsequently, the Naval Headquarters released 12 vacancies for SC/ST to be filled up urgently under the Special Recruitment Drive as per order dated 17.6.1996. Since there was already a large short-fall of vacancies for SC/ST, it was decided to fill up the vacancies to the extent possible from the panel of 25 candidates finalised earlier against the 12 notified vacancies. Accordingly, the candidates at S.No. 13, 16, 19 and 22 who belong to reserved category were offered appointment. Sr.No. 14

who was selected against the Handicapped quota was also offered appointment. Since no general candidate had been appointed beyond the quota of 6 for the notified vacancies, the applicants cannot claim ^{their} right for appointment against the vacancies reserved for SC and ST. The respondents have further stated that once the 12 vacancies as per the notification had been filled, the panel had been fully operated and therefore in terms of the O.M. dated 4.4.1983 the future vacancies after exhausting of the panel are to be filled through the fresh recruitment. The respondents therefore plead that since the panel as per the notified vacancies had been exhausted, the applicants cannot have any right to claim appointment against the vacancies released subsequently. The respondents therefore submit that both the applications are misconceived and deserve to be dismissed.

5. The applicant has filed a rejoinder reply in OA.NO. 42/99. However, no rejoinder has been filed in OA.NO. 115/99. In the rejoinder reply, the applicant has strongly contested the submissions of the respondents and reiterated his grounds taken in the OA. The main submissions made in the rejoinder reply are as follows:- (a) The respondents at no time had disclosed the break-up of 12 vacancies notified by the Employment Exchange and it is for the first time that this information has ^{been} disclosed in the written statement. (b) The additional candidates are always recommended by way of reserve panel or for additional anticipated vacancies in the course of normal working,

and therefore all the candidates on the panel have a right to appointment before resorting to fresh recruitment. (c) No requisition was sent to Employment Exchange for eponoring the name of handicapped persons as no vacancy was earmarked for the handicapped quota. If there was a vacancy earmarked for the handicapped quota, the same should have been filled up in May, 1994 when the panel was notified instead of waiting till May, 1996. This shows that label of "Handicapped quota" is being given to cover up the appointment of candidate at Sr.No. 14 over-looking the claim of the applicant at Sr.No. 12. (d) All the 12 vacancies released in 1996 for SC and ST quota could not be filled as not more than 50% of the vacancies can be filled up through reservation as per the law laid down by the Hon'ble Supreme Court. With 6 vacancies earmarked out of the 12 vacancies notified, the filling up of 4 more vacancies out of the panel would mean that 10 vacancies have been filled by SC/AT quota taking the reservation to 62.50% out of the 24 declared vacancies and the same is against the extant rules and is thus illegal. The applicant contends that the balance of 50% vacancies out of 12 vacancies should be given to the general candidates and against which the applicant has a good chance of being appointed. (e) In terms of O.M. dated 4.4.1983, if there is already a select list of candidates, the same should be exhausted first even against the future vacancies and if necessary, before going in for fresh recruitment and the number of vacancies to that extent may be reduced for the fresh recruitment. Against the vacancies of 24, 25 candidates out of the select list should be first appointed before going in for any fresh recruitment.

6. Heard the arguments of Shri M.S.Ramamurthy, learned counsel for the applicants and Shri V.S. Masurkar, learned counsel for the respondents. The material brought on record has also been gone carefully.

7. It is admitted fact that a panel of 25 candidates had been finalised to fill up the posts of Assistant Store Keeper and the applicant in OA.NO. 42/99 is appearing at Sr.No.12 and applicant in OA.NO. 115/99 at Sr.No. 23 of this panel. Keeping in view the rival contentions, the first question ^{what is} which needs to be gone into is as to the number of notified vacancies against which the panel of 25 candidates was prepared and whether the applicants have any right for being appointed from the panel as per the notified vacancies. The respondents in Paras 8 and 9 of their written statement have brought out that 12 vacancies were notified to the Employment Exchange for sponsoring the candidates for selection to the post of Assistant Store Keeper in 1993. The respondents have also stated that the break-up of 12 vacancies was 6 for general and 3 each for SC and ST. The applicants in both the OAs, have not furnished any details of the vacancies notified to be filled up in 1993 against which panel of 25 candidates had been finalised. However, on disclosure of the notified vacancies by the respondents, there is no denial of the same by the applicants. In fact, in the rejoinder reply, no remarks have been offered against para 8 of the written statement where the respondents have disclosed the notified vacancies. The applicants

with regard to the break up for 12 vacancies for various categories have simply stated that the respondents have for the first time come up with regard to break up of vacancies in the written statement. This contention of the applicants has no substance since the applicants had not even brought out as to what were the number of notified vacancies when the Employment Exchange was asked to sponsor the candidates. Further, the respondents were directed to produce the details of the Notification sent to the Employment Exchange. During the hearing they produced copies of two letters dated 19.1.1993 and 22.3.1993 addressed to the Employment Exchange for seeking sponsoring of the candidates to fill up the posts of Assistant Store Keeper. These two letters cover 8 vacancies.- The learned counsel for the respondents during the hearing ^{further} stated that there is one more notification covering 4 vacancies but the same is not readily available for production before the Bench. In any way, keeping in view the copies of Notifications brought on record and the averments made by the respondents in the written statement, there is no hesitation to hold that the panel of 25 candidates has been prepared against 12 notified vacancies comprising ^{of} 6 general and 3 each for SC and ST ^{categories}. Therefore the claim of the applicants for appointment from the panel under reference has to be looked at with reference to 12 notified vacancies.

8. The respondents have categorically stated that the panel for the notified vacancies of 12 as per the break up for various categories had been operated during 1994 and 1995 itself and appointments were offered to the 12 candidates as per the merit ^{order.} The respondents have further stated that both the applicants belong to general category and did not come within the merit list of 6 vacancies meant for general candidates. In view of this, the respondents contend that the panel had been operated to the extent of notified vacancies and therefore the panel stands exhausted. As indicated earlier that though the ^{select} panel was made for 25 candidates, the notified vacancies were only 12. Once the 12 vacancies have been filled up as ^{of vacancies} per merit order as per break up for various categories, the panel stands exhausted. Any excess candidates placed on the panel over and above notified vacancies will have to be treated as on waiting list. The candidates can have a right for appointment as per the notified vacancies and those who are on the waiting list cannot have any vested right for being appointed. In the present case, the applicants are belonging to general ^{category} candidates ^{and} ^{in zone} did not come as per merit list against the 6 vacancies earmarked for general category. and therefore the applicants cannot have any claim for appointments from the panel. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of Shri Sanjoy Bhattacharjee vs. Union of India, 1997(1) SC SLJ 482 and K. Jayamohan vs. State of Kerala, 1993(1) SLJ (SC) 19.

In the first case of Shri Sanjoy Bhattacharjee, the notified vacancies were 480 while the panel was made for much more vacancies. After the panel was operated to the extent to notified vacancies, the respondents issued notification for fresh recruitment to fill up the vacancies arising thereafter. This was, however, challenged before the Tribunal on the plea that till such time the candidates on panel are appointed, the fresh recruitment cannot be gone into. This plea was not accepted by the Tribunal and the OA, was dismissed holding that mere putting a candidate on panel does not give any right for being appointed. This was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court has upheld the view taken by the Tribunal. Hon'ble Supreme Court observed that putting a candidate on waiting list does not give him right for an appointment. For any subsequent vacancies, every one in the open market is entitled to apply for consideration of his/her claim on merit in accordance with law and it would be consistent with the provisions of Articles 14 and 16(1) of the Constitution. In view of this, the direction sought for not to fill up the vacancies having arisen subsequently until the candidates in the waiting list are exhausted cannot be granted. In the case of K. Jayamohan also against the 2 notified vacancies a select list of 10 candidates was prepared by the Public Service Commission. In this case also the same view as in the case of Shri Sanjoy Bhattacharjee has been expressed by their Lordship when the matter was agitated by those of the candidates who were on the waiting list for appointment. In the present case, the main thrust of the arguments of the

applicants is that the respondents have continued to operate the panel beyond the notified vacancies to fill up the vacancies arising subsequently and therefore they are entitled to be appointed from the panel against the vacancies arising now before going in for fresh recruitment. The respondents in the written statement have admitted the appointment of the candidates from the waiting list at Sr.No. 13, 14, 16, 19 and 22. All these candidates are below the applicant at Sr.No. 12 in OA.NO. 42/99 but above the applicant in OA.NO. 115/99. The respondents have explained the special circumstances under which the candidates from the waiting list have been offered appointment to fill up the short fall of SC/ST categories. This aspect has been deliberated subsequently to identify if the applicants are aggrieved by this action of the respondents and any right arises to them for entitlement for appointment from the panel under reference. However, so far as the right of the applicants against the notified vacancies is concerned, both the applicants do not come within the merit list for the vacancies meant for general category and therefore the names of the applicants are on the waiting list. As held by the Hon'ble Supreme Court in the judgements cited above, the candidates from the waiting list cannot have any right to be appointed against the vacancies arising subsequently to the notification of vacancies against which the select list has been prepared. The learned counsel for the applicants also made a strong plea of their entitlement for appointment referring to the provisions of O.M. dated 4.4.1983

of Department of Personnel and Administrative Reforms brought on record at Exhibit 'R-2' with the written statement. The learned counsel for the applicants contended that as per this O.M., the panel remains valid till such time all those who are placed on the panel had been offered appointment before going in for fresh recruitment. It was further submitted by the learned counsel for the applicants that in the present case the respondents continued the operation of the panel from 1994 till 1997 which indicated that the vacancies arising subsequently were also filled up from the panel of 25 candidates which was finalised in 1994 apparently taking into account the anticipated vacancies arising subsequently. These arguments of the applicants have no substance once we have recorded our findings above that the notified vacancies were only 12. From Para 3 of the O.M. dated 4.4.1983, it is quite clear that the validity of the panel will remain only till such time the selected candidates to the extent of declared vacancies are offered appointment. It is no-where mentioned in this O.M. that the panel will remain valid to fill up the vacancies arising subsequently to the notified vacancies. Since the applicants did not come within the zone of appointment under the general category against the notified vacancies, the applicants cannot get any benefit from O.M. dated 4.4.1983. Concludingly, we have no hesitation to hold that there is no merit in the claim of the applicants of being appointed as Assistant Store Keeper against the panel of 25 candidates notified in 1994.

9. The second question relates to offer of appointments to some of the candidates below Sr.No. 12. The applicants in the OA. have brought out that the candidates at Sr.No. 13, 14, 16, 19 and 22 have been offered appointment. This has been admitted by the respondents in the written statement. The respondents have explained that candidates at Sr.No. 13, 16, 19 and 22 have been offered appointment to fill up the vacancies of SC/ST while candidate at Sr.No. 14 has been offered appointment against handicapped quota. The applicants have strongly reacted to the submissions of the respondents in the written statement with regard to offer of appointment to candidates at Sr.No.13, 14, 16, 19 and 22. Now taking first the case of appointment to Sr.No. 14, the respondents have submitted that he had been offered appointment against the handicapped quota. The applicant in OA.NO. 42/99 has contested this submission of the respondents stating that no quota was fixed for the handicapped category in the panel of 25 candidates prepared in 1994 and label of "Handicapped" quota is being given to cover up the appointment of Sr.No. 14 over-looking his claim at Sr.No.12. Keeping in view the averments made by the respondents and the documentary evidence made available by the respondents during the hearing, we find that there is no merit in the contention of the applicant. The respondents have made available the letter dated 17/23.11.1995 by which the names of the physically handicapped candidates had been sponsored by the Special Employment Exchange.

This list includes the name of candidate at Sr.No.14, i.e. Vinayak C. Watikar. The sponsored candidates had been subjected to selection by way of written test and oral test and Shri Vinayak C. Watikar, i.e. candidate at Sr.No. 14 in the panel under reference had been selected. Based on this selection, Shri Watikar had been offered appointment. In view of these details furnished by the respondents, it is noted that the appointment to the candidate at Sr.No. 14 from the panel had been offered not by virtue of his being placed on this panel but due to his selection against the handicapped quota for which the selection was processed separately. The appointment of candidate No. 14 is therefore not from the waiting list and applicant in OA.NO. 42/99 cannot have any case of discrimination in the matter of ^{this} appointment. As regards the offer of appointment to the candidates at Sr.No. 13,16,19 and 22, the respondents have explained the special circumstances under which these appointments have been made from the waiting list. The respondents have submitted that as per letter dated 17.6.1996 Naval Headquarters released 12 vacancies to be filled up to clear the short fall of SC/ST vacancies under the special recruitment drive. The respondents have further submitted that since there was already accumulation of vacancies under SC/ST and there was a need to fill up the vacancies urgently under the special recruitment drive, it was considered fit to make use of the waiting list and offer appointment to the available candidates belonging to SC/ST category. It is further stated that only four candidates at Sr.No. 13,16,19 and 22 were available in

the waiting list and therefore they were offered appointment. In view of this, the respondents contend that the applicants who belong to general category cannot compare their right to appointment from the waiting list once they could not be appointed from the panel as per the notified vacancies. The applicants in the rejoinder reply have reacted to the filling of vacancies against the reserved quota stating that all the 12 vacancies released for SC/ST quota ^{cannot} be filled in view of the law laid down by the Hon'ble Supreme Court ^{par which} ~~as~~ ^{reservation in} the ~~recruit-~~ment against the vacancies could not exceed 50% of the vacancies to be filled up. The applicants have indicated that against the notified 12 vacancies and subsequent 12 vacancies released for SC/ST as indicated by the respondents, 10 SC/ST candidates have been appointed which ^{result in} ~~would~~ reservation of more than 62.50% against the declared 24 vacancies. The applicants therefore plead that such an action of the respondents is illegal and the balance vacancies available should be thrown open for the general category against which the applicants have good chance of appointment. This contention of the applicants is not tenable. Even taking that the total vacancies are 24, only 10 candidates have been given appointment and therefore the limit of 50% had not been exceeded. The respondents have ^{also} indicated the special circumstances under which the wait listed SC/ST candidates had been offered appointment. The Hon'ble Supreme Court in case of Shankaran Dash vs. Union of India, 1991 SCC (L&S) 800 has held that adoption of a different policy ^{be} for filling reserved vacancies may not ~~be~~ arbitrary in view

of special circumstances prevailing. However, for determining any merit in the claim of the applicant for appointment, we need not go into the issue whether the action taken by the respondents in filling up the vacancies of the SC/ST under the special recruitment drive from the waiting list is legally sustainable. This is on account of two considerations. The first consideration being that the candidates at Sr.Nos. 13, 16, 19 and 22 are not party to the present OA. and no adverse orders could be passed which would affect their appointments. Secondly, even if for a moment it is accept^{ed} that the appointment of candidates at Sr.Nos. 13, 16, 19 and 22 is not legally sustainable and the same is set aside, ^{but} the applicants will not get any right for appointment ^{against reserved vacancies}. As deliberated earlier, the applicants can have a claim for appointment against the notified vacancies and can be aggrieved only if a candidate below the applicants in the order of merit is offered an appointment ignoring the merit of the applicants. This is not so in this case as the applicants did not come within the zone of merit against the six notified vacancies for the general candidates. In view of these considerations, the submissions made by the applicants with regard to appointment of candidates at Sr.Nos. 13, 16, 19 and 22 does not merit consideration.

10. In the result of the above, we are unable to find any merit in the OAs and the same ^{are} dismissed accordingly. Interim stay orders dated 8.2.99 in OA.No. 42/99 and 19.2.99 in OA.NO. 115/99 stand vacated accordingly. No order as to costs.

(D.S. BAWEJAN)
MEMBER (A)

(R.G. VAIDYANATHA)
VICE CHAIRMAN