

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00099/2015

Tuesday, this the 19th day of February, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

1. Prasanth D.P., S/o. Pradaban, aged 28 years, Dharbathara, Vayalar PO, Cherthala – 688 536.
2. Shanil T.M., S/o. Mukundan T.M., aged 33 years, Thrikkassery, Vellanchira PO, Trichur – 680697.
3. Bibin P.K., S/o. Karthikeyan, aged 31 years, Parappurath House, Padiyoor, Trichur – 680688.
4. Nivin T.R., S/o. Ramachandran T.N., aged 30 years, Thavalakkulangara, Nettoor PO, Ernakulam 682 040.
5. Jithesh Kumar, S/o. Mohanan M., aged 31 years, Moolayil, Ayanikkad PO, Iringal via, Kozhikode, Pin – 673521.
6. Abhilash A.C., S/o. Appukkuttan, aged 31 years, AC Cottage, Vattavila PO, Neyyattinkara – 695132.
7. Renny Samuel, S/o. C.S. Xavier, aged 31 years, Chelakattu, 15/242, Moolamkuzhi, Kochi 682 002.
8. Jithin M.J., S/o. Jayaprakash M.G., aged 28 years, Manakkilath, Mattam PO, Trichur – 680 602.
9. Ratheesh K.V., S/o. K. Venugopalan, aged 30 years, Prabhakara Vilasam, Ayayil, Aruvippuram PO, Thiruvananthapuram 695 126.
10. Prajil Raj T.P., S/o. Rajan T.M., aged 28 years, Raj Nivas, Pookode, Koothuparumba PO, Kannur – 670 643.
11. Binu A.S., S/o. A.K. Sarasakshan, aged 30 years, Appasseril Parambu, Society Road, SRRA 110, Maradu PO, Kochi – 682 304.
12. Sreejesh Kumar P., S/o. P.V. Raghavan, aged 31 years, Puthiyadath House, Kuniyan Karivellur PO, Kannur – 670 521.

13. Nidheesh K., S/o. Gangadharan T., aged 29 years,
Mathamangalath, Pathiyad PO, Kannur, Pin – 670741.
14. Deepu Augustine C.a., S/o. P.V. Augustine, aged 28 years,
Payyappilly, Periyar Gardens, Thundathumkadavu,
Varappuzha PO, Pin – 683517. **Applicants**

(By Advocate : Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by the Secretary to Government of India,
Ministry of Defence, New Delhi – 110 001.
2. The Flag Officer Commanding in Chief, Southern Naval Command,
Kochi – 682 004. **Respondents**

(By Advocate : Mr. N. Anilkumar, SCGSC)

This application having been heard on 06.02.2019 the Tribunal on
19.02.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The reliefs claimed by the applicants are as under:

- “i. To declare that Annexure A2 is void as arbitrary, unjust, discriminatory and violative of Art. 14, 16 and 21 of the Constitution of India, and direct the respondents not to apply the said rules for filling the posts of Tradesmen Skilled under them;
- ii. Alternatively, to direct the respondents to consider the applicants for appointment to the post of Tradesman skilled in accordance with Annexure A1 towards all the vacancies available as on the date of publication of Annexure A2;
- iii. Quash Annexure A3;
- iv. grant such other reliefs as may be prayed for and the court may deem fit to grant and
- v. To grant the costs of this Original Application.”

2. The brief facts of the case are that the applicants are aggrieved by the Integrated Head Quarters, Ministry of Defence (Navy) Group C Posts

(Tradesmen) Recruitment Rules, 2012 to the extent it affects their rights as the ex-naval apprentices to get absorbed in the posts of Tradesmen (Skilled). They are further aggrieved by the move to fill up the vacancies in existence as per the said Recruitment Rules and the reservations granted to various posts which is far in excess of 50% of the vacancies filled up.

3. The applicants are ex-naval apprentices. They all underwent apprenticeship training under the Apprentices Act, 1961 at the establishments under the 2nd respondent in various trades. The recruitment to the post of Tradesmen (Skilled) under the respondents are governed by Navy Group C and D Industrial Posts (Tradesmen and Labourers) Recruitment Rules, 2000. The method of appointment to the post of Tradesman skilled prescribed is by absorption of ex-naval apprentices and promotion failing which by direct recruitment. In respect of designated trades 60% vacancies are to be filled by absorption. In regard to non-designated trades 90% recruitment is to be made by absorption. For a very long time the recruitment by absorption was not made by the respondents. Appointment by absorption was refused on the ground that the available ex-naval apprentices are over aged. However, on intervention of this Tribunal some appointments were made from among ex-naval apprentices. However, the applicants were not granted such appointments. On 9th June, 2012 new Recruitment Rules were promulgated. In the new Recruitment Rules age limit of 18-25 years is made applicable to ex-naval apprentices relaxable to the extent of their period of apprenticeship. The provision for absorption is totally done away with. All what is now available to the ex-naval

apprentices is a preference for direct recruitment, other things being equal. Respondents issued Annexure A3 notification for filling up the available vacancies as per the new Recruitment Rules (Annexure A2). The applicants belong to different designated trades and they all have made applications to various posts notified by Annexure A1. It is aggrieved that they would not be considered for appointment.

4. Notices were issued to the respondents. They entered appearance through Shri N. Anilkumar, SCGSC who contended that applicants had undergone apprenticeship training in various trades and it is not obligatory on the part of the employer to offer any employment to any apprentice after the successful completion of apprentice training. As per Annexure A1 60% of the posts of designated trades are to be filled up by absorption of ex-naval apprentices. The 2nd respondent had been appointing senior most ex-apprentices against 60% vacancies of tradesman (Skilled) without applying the age relaxation. In the process of direct recruitment the ability of the candidates to carry out the skilled job is assessed by the Board of Officers by conducting written test, practical test, personal interview, etc. Respondents have relied upon various judgments of the apex court and contended that the courts cannot interfere in Recruitment Rules and method of appointment. In the reply statement they have mentioned in detail the trade-wise postings and deficiency statement. The respondents submitted that the reservations granted do not exceed 50% of the posts held. Respondents have relied on the judgment of this Tribunal in OA No. 485 of 2012 and connected cases dated 10.9.2012 and submitted that the interest of

the ex-naval apprentices have been safeguarded by giving them preference over others in selection as Tradesman (Skilled) provided other qualifications are equal. They pray for dismissing the OA.

5. Heard Shri M.R. Hariraj, learned counsel appearing for the applicants and learned SCGSC appearing for the respondents. Perused the records.

6. This Tribunal in OA No. 485 of 2012 and connected cases passed the following order on 10th September, 2012:

“These O.As having common facts and common issues were heard together and are disposed of by this common order.

2. The applicants in these O.As are Ex-Naval Apprentices of designated trades who have passed the relevant trade test conducted by the National Council for Vocational Training. As per the Recruitment Rules, the posts of Tradesman (Skilled) are to be filled 60% by absorption of Ex-Naval Apprentices of designated trades. There are a number of vacancies in various trades under the 2nd respondent which are not being filled up. Aggrieved, the applicants have filed these O.As for a direction to the respondents to consider them for absorption in the cadres of various Tradesman (Skilled) in the available vacancies with effect from the date of occurrence of vacancies with all consequential benefits including arrears of pay and allowances with interest.

3. The applicants contended that the inaction on the part of the respondents to fill up the vacancies of Tradesman (Skilled) for various categories is arbitrary, discriminatory and unjust. The respondents have not taken any conscious decision not to fill the vacancies. This Tribunal has held in a catena of orders that age limit will apply only to direct recruitment and not to absorption. The vacancies in a particular cadre have to be filled in as per the rules in force at the time of occurrence of the vacancies. The proposed amendment of the Recruitment Rules is no reason at all for refusal to fill up the vacancies as per the rules in force now. As there is no justification whatsoever in not offering the vacancies available in the quota for absorption to the applicants, they are entitled to be absorbed with effect from the date of occurrence of vacancies with all consequential benefits.

4. The respondents in their reply statement admitted that no age limit for absorption is prescribed in the Recruitment Rules. The Apprentices were being absorbed against the earmarked vacancies without any age restriction. The Recruitment Rules of Tradesman (Skilled) are under examination for revision and the revised Recruitment Rules are awaited. It shall not be obligatory on the part of the employer to offer any employment to any Apprentice after successful completion of the

apprentice training as per Rule 22 of the Apprentices Act, 1961. The applicants cannot be considered for appointment in the available vacancies bypassing their seniors.

5. We have heard Mr. M.R. Hariraj, Mr. T.A. Rajan, Mr. U. Balagangadharan and Mr. P.A. Kumaran, learned counsel for the applicants in respective O.As and Mr. Sunil Jacob Jose, learned SCGSC appearing for the respondents and perused the records.

6. This Tribunal has held in a number of cases that age restriction will not apply to the appointment of Ex-Naval Apprentices in the available vacancies. In the instant cases, vacancies exist in different trades under the respondents, but there may not be enough vacancies to accommodate all the applicants. Seniority lists in different trades are available. The applicants cannot be considered for appointment in various trades bypassing their seniors. The applicants do not have an indefeasible right to appointment just because they are Ex-Naval Apprentices who have passed the trade test. There is no merit in the contention of the applicants that they should be absorbed with effect from the date of occurrence of vacancies with all consequential benefits and arrears. In the facts and circumstances of the cases, we are of the considered view that these O.As can be disposed of with a direction to the respondents to consider the applicants for absorption in the available vacancies subject to seniority and their turn in the categories to which they belong within a period of three months from the date of receipt of a copy of this order.

7. Ordered accordingly. No order as to costs.”

7. We find that the above order passed by this Bench of the Tribunal squarely applies to the present case as well. Therefore, nothing remains to be decided in the present case.

8. Accordingly, the Original Application is disposed of directing the respondents to consider the applicants for absorption in the available vacancies subject to seniority and their turn in the categories to which they belong within a period of three months from the date of receipt of a copy of this order. Parties are directed to bear their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00099/2015**APPLICANTS' ANNEXURES**

- Annexure A1** - True copy of Navy Group C and D Industrial Posts (Tradesman and Labourers) Recruitment Rules, 2000.
- Annexure A2** - True copy of Integrated Headquarters, Ministry of Defence (Navy) Group-C Industrial Posts (Tradesmen) Recruitment Rules, 2012.
- Annexure A3** - True copy of notification issued by the 2nd respondent (published in thozhil vartha on 20.12.2014) as available on the internet.

RESPONDENTS' ANNEXURES

- Annexure R1** - Copy of extract of Apprentices Act, 1961.
- Annexure R2** - Copy of the Hon'ble CAT Ernakulam Bench order dated 10th September, 2012.

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