

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00895/2016

Wednesday, this the 6th day of February, 2019.

CORAM

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

Hon'ble Mr.Ashish Kalia, Judicial Member

Raees Kulangara, aged 25 years

S/o Usman Koya

Kulangara House (No.25/311)

Manancherithazham, Pokkunnu P.O.,

Kozhikode-673 013.

Applicant

[Advocate: Ms. Nazeeba O.H.]

versus

1. The Director General
Ministry of Shipping, Govt of India
Directorate of Lighthouses and Lightships,
Deep Bhavan, D-372/2
Taratolla Road, Kolkatta-700 088 (West Bengal)

2. Union of India represented by
the Secretary, Ministry of Shipping
Govt of India, New Delhi-110 001.

Respondents

[Advocate: Mr.M.K.Padmanabhan Nair]

The OA having been heard on 23rd January, 2019, this Tribunal delivered the following order on 06.02.2019:

ORDER

By Ashish Kalia, Judicial Member

The applicant seeks the following reliefs:

- i) Direct the respondents to publish the result of the interview;*
- ii) Direct the respondents to call for the records relating to the recruitment of Navigational Assistant grade-II and to proceed with the appointment.*

2. Brief facts of the case are that the applicant is a graduate with B.Tech in the stream of Electronics & Communication. He applied for the post of Navigational Assistant Grade-II (Group 'C' Non-Gazetted) pursuant to notification dated 23rd August 2014. 31 posts were available out of which 9 were reserved for OBC category. Applicant belongs to OBC category and he possessed the required qualification. 361 candidates participated in the written test and the applicant qualified the written test and attended the interview at Calcutta on 7.9.15 and 9.9.2015. 58 candidates attended the interview on 7.9.2015. In order to prove the applicant had attended the interview, he has produced the reimbursement of TA to SC/ST candidates who appeared for the written examination. Thereafter on 3rd June 2016 in reply to RTI application, he came to know that the recruitment to the post of Navigational Assistant Gr.II had been cancelled due to administrative reasons. According to the applicant, there are sufficient number of vacancies and he being unemployed should be considered for the same. He has relied upon the judgment of the Apex Court in *Union of India and others vs. Rajesh P.V and another* (Civil Appeal No.5321 of 2003) in support of his case.

3. Notices were issued to the respondents and reply has been filed wherein it is submitted that the Directorate had initiated the process to fill up the post of 31 Navigational Assistant Grade-II in the pay band of Rs.9300-34800/- with grade pay of Rs.2800/- on regular basis. In the meantime, the administrative Ministry of the Directorate General of Lighthouses and Lightship i.e., Ministry of Shipping, Govt of India as per letter dated 26th August 2015 (Annexure R1) had directed to re-organize the structure of the Directorate. Accordingly, out of 1267 post of various cadres, 442 posts had been identified as core posts which can

only be filled up on regular basis. Out of a total sanctioned strength of Navigational Assistants Grade II of 166 posts, 127 filled up posts had been declared as core and 39 unfilled posts were declared as non-core by the Directorate. In view of this subsequent development, the department was left with no alternative but to cancel the proposed recruitment process for filling up of 31 posts of Navigational Assistant Grade II. The respondents have further submitted that since the jurisdiction of present matter falls at Kolkatta, this Tribunal should not have entertained this application herein at Ernakulam Bench.

4. Heard counsel for the parties at length and examined the pleadings.

5. No doubt, the applicant has no indefeasible right for getting appointment on the post of Navigational Assistant Gr.II for which he got selected. Selection and appointment are two different aspects. In recruitment, the respondents always have an upper hand and the right to cancel the examination or reduce or increase the number of vacancies. The applicant has cited the judgment of the Apex Court in *Union of India and Others vs. Rajesh P.U., and another*, wherein the Hon'ble Apex Court held that:

“In addition thereto, it appears the Special Committee has extensively scrutinized and reviewed situation by re-evaluating the answer sheets of all the 134 successful candidates as well as the 184 unsuccessful candidates and ultimately found that except 31 candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment. There was no infirmity whatsoever in the selection of the other successful candidates than the 31 identified by the Special Committee. In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of all pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or other of irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no

infirmary could be found with reference to others, is nothing but total disregard of relevancies xxx xxx. The appeal, therefore, fails and shall stand dismissed. The interim order earlier granted thus automatically stands revoked. The appointments shall be made within 60 days from this day, without any further delay”.

6. A plain reading of this judgment would reveal that the Apex Court had ordered appointment of selected candidates whose results were declared by the department concerned but due to technicality, they were not appointed. Due to cancelling of entire selection, they had gone in appeal. In the present case, the selection process though had been completed, but result has not been declared. So the judgment of the Apex Court is not squarely applicable to the present case.

7. Be that as it may, the counsel for the applicant submitted that due to passage of time, they may not be eligible for next selection of the said post because of the age bar etc. The fact remains that the posts are available. The candidates who appeared in the examination were also there. Abrupt cancellation of the exam would affect the present applicant adversely. In the interest of justice, we are of the view that the applicant should be considered for future selection by giving age relaxation etc keeping in view the fact that he has appeared in the examination as an OBC candidate. Ordered accordingly.

8. With this above observations, the present OA is disposed of. No order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

Annexures filed by the applicant:

- Annexure A1: Copy of the centralized employment notice dated 23.8.2014.
Annexure A2: Copy of the Call letter dated 29.7.2015.
- Annexure A3: Copy of the list of allotment of seats for the written test.
Annexure A4: Copy of the list of candidates who attended the interview on 7.9.2015.
Annexure A4(a): Copy of the list of candidates who attended the interview on 8.9.2015.
Annexure A5: Copy of the notice issued by the respondent for reimbursement of TA to the SC and ST candidates who appeared in the written examination.
Annexure A6: Copy of the letter dated 25.7.2016 issued by the Lighthouse Employees Association addressed to the Director General, Directorate of Lighthouses and Lightships, Noida.
Annexure A7: Copy of the letter dated 3.6.2016 issued by the first respondent.
Annexure A8: Copy of the judgment dated 30.7.2003 in Appeal (Civil) No.5321/2003.
Annexure A9: Copy of Notification No.15/7/2017-RHQ.

Annexures filed by respondents:

- Annexure R1: Copy of letter No.LH-11020/5/2015-SL dated 26.8.2015
Annexure R2: Copy of Centralized Employment Notice in the Clause (IX)(h).
Annexure R3: Copy of LH 11020/5/2015-SL Govt of India, Ministry of Shipping dated 26th August 2015.