

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

MA/310/00053/2019 in & OA/310/00768/2018

Dated Wednesday the 30th day of January Two Thousand Nineteen

CORAM : HON'BLE MR. R. RAMANUJAM, Member (A)
HON'BLE MR. P. MADHAVAN, Member (J)

Arbind Kumar Choudhary,
Engineer & Ship Surveyor cum DDG (Tech),
Mercantile Marine Department,
Anchorgate Building, Rajaji Salai,
Chennai. Pin 600001.

....Applicant/Applicant

By Advocate M/s. Giridhar & Sai

Vs

1.Union of India,
rep by the Secretary,
Ministry of Shipping,
Transport Bhawan,
1, Parliament Street,
New Delhi 110001.

2.The Director General of Shipping,
Directorate General of Shipping,
9th Floor, Beta Building,
I-Think Techno Campus,
Kanjur Marg (East), Mumbai 400042.

3.The Chairman,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi 110069.

4.The Secretary (Personnel),
Department of Personnel & Training,
Ministry of Personnel, PG & Pensions,
Department of Personnel & Training,
North Block, New Delhi 110001.Respondents/Respondents

By Advocates Mr. M. Kishore Kumar (R1, R2 & R4)
Mr. M. Devendran (R3)

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))

Heard. The applicant has filed this OA seeking the following reliefs :

"A. declare that clause (ii) of clause 8 of the Recruitment Rules (Annexure) as regards the post of Deputy Chief Surveyor as not valid and thereby strike out the same and to declare that the applicant is eligible to be promoted for the said post.

B. direct the 3rd respondent to relax the applicant's shortage of seniority of one month and 3 days and to include his name in the list of candidates eligible for promotion to the post of Deputy Chief Surveyor and pass such further or other orders as necessary to meet the ends of justice."

2. It is submitted that the applicant was initially appointed as Engineer & Ship Surveyor on ad hoc basis on 07.04.2011. Subsequently, he was selected for the post of Engineer & Ship Surveyor cum Deputy Director General (Technical) along with 19 other candidates on regular basis. The applicant was informed of the selection on 24.01.2013. However, the appointment was delayed till 26.04.2013 due to pending police verification and other appointment related formalities not attributable to the applicant.

3. The applicant is eligible to be promoted to the post of Deputy Chief Surveyor in terms of his qualification etc although he is short of the requisite qualifying service by two months only. The applicant filed OA 308/2018 seeking relaxation of the qualifying service which the Tribunal disposed of by an order dt. 05.03.2018 directing the respondents to consider the matter in accordance with law and pass a reasoned order. Annexure R1 speaking order dt.

04.04.2018 was passed in pursuance thereof wherein it was stated that the case of the applicant would be considered for the post of Deputy General Surveyor once relaxation of qualifying service was obtained from UPSC/DoPT.

4. The grievance of the applicant is that a DPC is scheduled to be held for the said promotion on 01.02.2019 and the applicant is out of the reckoning only for the reason that no decision has been taken by the respondents regarding relaxation of qualifying service. It is submitted that if the DPC is allowed to be held without considering the name of the applicant, the applicant's right to be considered for promotion would be infringed. Accordingly, the applicant would seek the intervention of this Tribunal at this stage for a direction that the applicant's name should be considered provisionally subject to the said relaxation being granted by the competent authority.

5. Reply has been filed by the respondents R1 & R2 although no reply has been filed by R3 & R4 as yet.

6. Learned counsel for the respondents R1 & R2 would submit that it is not correct to say that the applicant's appointment was delayed in the year 2013 as the process of police verification and medical examination was bound to take some minimum time. Such time taken therefor could not be regarded as delay attributable to the respondents. The applicant is admittedly short of the qualifying service and his case could only be considered after relaxation is obtained from DoPT/UPSC. Since, no relaxation has been received so far, the

applicant is ineligible to be considered for promotion in terms of the applicable rules, it is submitted.

7. We have considered the matter. It is not in dispute that the applicant was appointed on ad hoc basis from 07.04.2011. The applicant is short of qualifying service by two months only even in terms of his regular service. However, if the ad hoc service is added, the applicant would be found to fulfil the requirement of qualifying service. It is not clarified when the respondents sent the proposal to DoPT/UPSC for relaxation of qualifying service. Since the impugned order is dated 04.04.2018, it is presumed that a proposal in this regard would have been sent before that date. Clearly, no decision has been taken by the competent authority despite a lapse of a period of over nine months.

8. In the above circumstances, we are of the view that the applicant's case could be considered provisionally in the ensuing DPC and he could be considered for promotion if found fit subject to relaxation of the qualifying service by the competent authority. We are also of the view that at this stage, there is no cause of action for the applicant to challenge the rule itself as his grievance is mainly about the manner of application of the rule rather than the legality of the rule itself. Respondents R3 & R4 are therefore, directed to take a view on the proposal for relaxation of qualifying service in the facts and circumstances of the case and in the light of their policy regarding relaxation as also decisions in precedent cases within a period of one month. The applicant

shall be at liberty to file a fresh OA, if any grievance subsists thereafter and if so advised.

9. OA is disposed of with the above directions. MA 53/2019 stands disposed of in the light of this order.

(P. Madhavan)
Member(J)

(R. Ramanujam)
Member(A)

30.01.2019

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