

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

**Original Application Nos.180/00345/2017, 180/00423/2017,
180/00439/17 & 180/00791/2017**

.Friday this the 9th day of August, 2019

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

O.A No. 180/00345/2017

1. Sarath O.C, aged 25 years
S/o.Chandra Bose
Odassery House, Cherai P.O
Ernakulam Dist. Pin : 683 514
2. Mini Joseph, aged 29 years
W/o.Jos Figarado
Pathissery house, No.21/1146
Palluruthy P.O
Kochi – 682 006
3. Nikhil K.M, aged 24 years
S/o.Manilal K.S
Kozhikkaparambil House
Cherai P.O, Ernakulam Dist.
Pin : 683 514
4. P.S.Jibin Mon, aged 24 years
S/o.P.K.Soman
Residing at CPWD Quarters, No.A/22
Block No.24, Kunnumpuram
Kakkanad, Kochi – 682 030
5. P.T.Amrutha Mol, aged 26 years
D/o.P.k.Thilakan
Palathingal House, Malipuram P.O
Valappu, Vypin, Kochi – 682 511

6. Gokul G.Menon, aged 22 years
S/o.Ambika .G
Karthy Bhavan, Ottappana
Thattappally P.O, Purakkad
Alappuzha, Pin 688 561
7. Anitha M.V, aged 29 years
W/o.P.R.Ratheesh
Poonthodath House
Nadakav Ameda Road
Vidhya Nagar, Udayamperoor.P.O
Kochi – 682 307

..... **Applicants**

(By Advocate Mr.T.C.G Swamy)

V e r s u s

1. Union of India
Represented by the Secretary
To the Government of India,
Ministry of Defence (Navy)
New Delhi – 110 011
2. The Flag Officer Commanding-in-Chief
Headquarters Southern Naval Command
Naval Base, Cochin – 682 004
3. The Chief of the Naval Staff
Integrated Headquarters
Ministry of Defence (Navy)
Directorate of Civilian Personnel
D-II Wing, Sena Bhavan
New Delhi – 110 011

..... **Respondents**

(By Advocate – Mr.T.C.Krishna,Sr.PCGC)

O.A No. 180/00423/2017

1. Lijin P.P, aged 26 years
S/o.Prem Sagar
Panachikkal House, Cherai P.O
Ernakulam Dist. Pin : 683 514

2. Muhammad Shiyas, aged 20 years
S/o.Jaleel K.M
Kadavil House, Cherai P.O
Ernakulam Dist. Pin 683 514 **Applicants**

(By Advocate Mr.T.C.G Swamy)

V e r s u s

1. Union of India
Represented by the Secretary
To the Government of India,
Ministry of Defence (Navy)
New Delhi – 110 011
2. The Flag Officer Commanding-in-Chief
Headquarters Southern Naval Command
Naval Base, Cochin – 682 004
3. The Chief of the Naval Staff
Integrated Headquarters
Ministry of Defence (Navy)
Directorate of Civilian Personnel
D-II Wing, Sena Bhavan
New Delhi – 110 011
4. The Chief Staff Officer (Personnel & Administration)
Head Quarters Southern Naval Command
Naval Base, Kochi – 682 004 **Respondents**

(By Advocate – Mr.K.C.Muraleedharan,ACGSC)

O.A No. 180/00439/2017

- Anuraj K.S, aged 22 years
S/o.Santhoshkumar.C.R
Kizhakkechittupally
Cheruvaranam, Varanam P.O
Cherthala, Pin 688 555
Alappuzha Dist **Applicant**

(By Advocate Mr.T.C.G Swamy)

V e r s u s

- | | | | |
|----|---|-------|--------------------|
| 1. | Union of India
Represented by the Secretary
To the Government of India,
Ministry of Defence (Navy)
New Delhi – 110 011 | | |
| 2. | The Flag Officer Commanding-in-Chief
Headquarters Southern Naval Command
Naval Base, Cochin – 682 004 | | |
| 3. | The Chief of the Naval Staff
Integrated Headquarters
Ministry of Defence (Navy)
Directorate of Civilian Personnel
D-II Wing, Sena Bhavan
New Delhi – 110 011 | | |
| 4. | The Chief Staff Officer (Personnel & Administration)
Head Quarters Southern Naval Command
Naval Base, Kochi – 682 004 | | Respondents |

(By Advocate – Mr.S.Sreenath,ACGSC)

O.A No. 180/00791/2017

- | | | | |
|----|---|-------|-------------------|
| 1. | Maheshkumar K.M
Aged 30 years
S/o.Mohanan
Kozhikottuparambil House
Kanjiramattom P.O – 682 315
Ernakulam District | | |
| 2. | Anandu Baby M.K
Aged 23 years
S/o.Karthikeyan
Mozhikodathu House
Brahmamangalam P.O-686 605
Thalayolaparambu
Kottayam | | Applicants |

(By Advocate Mr.M.R.Nandakumar)

V e r s u s

The Flag Officer Commanding-in-Chief
 (For Staff Officer (Civilian Recruitment Cell))
 Head Quarters Southern Naval Command
 Kochi- 682 004

..... **Respondents**

(By Advocate – Mr.S.Sreenath,ACGSC)

These Original Applications having been heard on 1.8.2019, the Tribunal on 9.8.2019 delivered the following:

O R D E R

Per: Mr.Ashish Kalia, Judicial Member

Since a common issue has to be adjudicated in all the four Original Applications under consideration and since the factual situations in these cases are almost identical, we feel that it is convenient to dispose of these cases by a common order. For the sake of convenience, pleadings and the documents contained in Original Application No.180/00345/2017 are referred to in this common order.

2 A notification was published in the Employment News for recruitment of Civilian Personnel in the Indian Navy – 2016 at HQ Southern Naval Command, Kochi (Annexure A-1 notification). The applicants who have the minimum qualification of matriculation responded to the same. They had prepared themselves for the written examination which is part of the selection process. But they came to know that the respondents are

proposing to conduct written examination on 2nd, 3rd and 4th of May 2017 , but they were not called for the same. On enquiry, they came to know that vide Annexure A-2, the cut off percentage in matriculation for general and OBC candidates is 79%, SC 75%, ST 62%, HH & OH 50%, VH 45% and meritorious sports person and Ex-servicemen – pass in matriculation. Applicants submit that the minimum qualification for appointment to the post of MTS as per the recommendations of 6th CPC is SSLC/matriculation and there is no provision in the recruitment rules enabling modification of the eligibility conditions and for prescription of any particular percentage of marks for determining the eligibility of the candidates for consideration. Similarly, there is no concept of short listing of applications. The applicants submit that the cut off eligibility marks mentioned in Annexure A-2 is not based on any rationale or any other considerations. The competent authority to relax the rules , if any, is the 1st respondent Secretary to the Government of India and the relaxation even if granted by the said authority cannot go against the statutory rules. The applicants who are eligible to be considered for appointment to the post of MTS (Ministerial) in terms of the recruitment rules are subjected to substantial prejudice and irreparable injury. Hence, they approached this Tribunal for redressal of their grievances.

3 Notices were issued and the respondents entered appearance through Mr.T.C.Krishna, Sr.PCGC (in O.A 345/17), Mr.S.Sreenath, ACGSC (in O.A

Nos.439/17 & 791/17) and Mr.K.C.Muraleedharan (in O.A 423/17). Respondents have filed their reply statements. It is stated therein that the applications for the post of MTS (ministerial) were invited and published in the Employment News dated 09-15 Jul 2016. A total of 1,65,519 application forms were received for 246 posts (which was later enhanced to 325 vacancies) vide Annexure A-1 notification. If the numbers of applications are too large in proportion to the vacancies, the Appointing Authority reserved the right to shortlist the applications as deemed appropriate and only the shortlisted candidates will be called for the written test. Merely fulfilling the basic eligibility criteria does not automatically entitle and applicant to be called for written test. Since the number of applications received were too large, it was not feasible to call all applicants for written examination. Therefore, based on para 20(b) of the Standard Operating Procedure (SOP) issued by the Integrated Headquarters (Navy), the number of candidates had to be restricted to 1:25 ratio (Minimum 25 candidates competing for 1 vacancy). Accordingly, the cut off percentage in the matriculation for general and OBC category was 79%, SC 75%, ST 62% HH and OH 50%, VH 45%, meritorious sports person and ex-servicemen – pass in matriculation. Resultantly, a total of 8473 candidates were shortlisted and issued with call letter as per the breakdown with respect to their category viz. General 3977, Gen/OBC 2652, OBC 249, GEN/SC 872, SC 120, GEN/ST 527 and ST 76. The horizontal reservation

is included in the category mentioned above and the specific call letters issued for Hearing Handicapped 202, HH/Meritorious Sports Person (MS) 07, MS 94, and Visually Handicapped (VH) 216 and Ex-servicemen 285. Respondents submit that the criteria adopted by the respondents do not suffer from any arbitrariness or bias. The applicants having responded to the notification after perusing all the specifications of the notification cannot now turn around and challenge the same. It is further submitted that out of the 7 applicants in the O.A and 12 friends of the applicants stated to have forwarded the application but not received the call letter, 13 applicants were traced and verified. 3 applications have not been received by the respondents. The respondents explained in detail in respect of the justification on why the call letters were not issued/received by the applicants. The recruitment rules and SOP for Indian Navy Civilian recruitment is available in the Navy website and there is no deviation in the procedure being followed by the respondents. In view of the above facts, respondents pray for dismissal of the Original Application.

4. Heard learned counsel for the parties Shri. Sarath representing Shri. TCG Swamy and learned council for the respondents Mr. TC Krishna Sr.PCGC, Mr. Sinu G Nath representing Mr. KC Muraleedharan ACGSC, Mr. S Sreenath. Also perused the records and appreciated the submissions on their behalf.

5 The applicants, who have requisite qualifications for applying for the post of Multi Tasking Staff in Head Quarters Southern Naval Command i.e, matriculation, had applied for the same, but they were not called for written test or interview. The applicants have raised their objection that they should have been called for the written test on the basis of their qualifications. They should not have been called for the written test and rejected their candidature. The applicants contend that restriction on the basis of percentage of marks obtained in matriculation is arbitrary and wrong.

6 On the other hand, Mr. TC Krishna, Sr.PCGC, learned counsel for the respondents submitted that a large number of, 1,65,519, candidates had applied , in response to the notification against 246 posts, which were later enhanced to 327. Hence the Appointing Authority decided to restrict the number of candidates to be called for the written test. Possession of basic minimum qualification does not reserve any right to be called for the written test. Since large number of applications received, it was not feasible to call all applicants for the written examination and the number of candidates were restricted to 1:25 ratio for one vacancy. Accordingly cut off percentage in the matriculation was fixed on the basis of uniform policy of cut off percentage, keeping reservation for all categories i.e visually/hearing handicapped, meritorious sports person, ex-service, SC/ST/OBC candidates etc. and they were called for the written and

interview. The criteria adopted by the respondents was fair and transparent. The contention raised by the applicants that they have not being called for the written test is arbitrary, does not found good because it was mentioned in the notification itself that the Appointing Authority can restrict the number of candidates by shortlisting and the same was not questioned by the applicants prior to the date they have not been called for written test. It means, they have agreed to it and submitted their applications despite the said conditions. Now they cannot be allowed to raise this contention after participating in the selection process. This also not the case of the applicants that the candidates having lesser marks than theirs have been called for the written test. It is also neither the case of the applicants that they were not aware of this condition nor they were kept in dark by the respondents. The bald assertion made by the applicants that the selection was made in shabby manner with producing any material contrary to so it is not tenable in the eyes of law. We find no merit in the contention raised by the applicants council.

7. The Apex Court has in the matter of ***D.Sarojakumari v. R.Helen Thilakom and Others*** reported in (2017) 9 SCC 478 has ruled that once the candidates participated in selection process and on becoming unsuccessful cannot be allowed to challenge the whole process of the selection. It reads:

“ 6. In *Madan Lal & Ors. vs. State of J&K & Ors.*, the petitioner laid challenge to the manner and method of conducting viva-voce test after they had appeared in the same and were unsuccessful. This Court held as follows :-

“9.....Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted.....”

7. In *Manish Kumar Shahi vs. State of Bihar*, this Court held as follows :-

“23.....Surely, if the petitioner’s name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under [Article 226](#) of the Constitution of India only after he found that his name(1995) 3 SCC 486 (2010) 12 SCC 576 does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

8. In the case of *Ramesh Chandra Shah and others vs. Anil Joshi and others* 4 the petitioners took part in the process of selection made under the general Rules. Having appeared in the interview and not being successful they challenged the method of recruitment itself. They were not permitted to raise such an

objection. This Court held as follows :-

“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

9. Same view has been taken in *Madras Institute of Development Studies and Another vs. Dr. K. Sivasubramanian and others*

10. The Kerala High Court did not note the above mentioned judgments and ignored the well settled position of law in rejecting the specific plea raised by the appellant herein that the appellant could not raise the issue that no direct recruitment should have been conducted once she had applied for and taken part in the selection process by direct recruitment.

11. As far as the present case is concerned an advertisement was issued by Respondent No.6 inviting applications for the post of Music Teacher in Samuel LMS High School. Respondent No.1 did not raise any objection at that stage that the post could not be filled in by direct recruitment and she should be considered for promotion. Not only that, she in fact, applied for the post and took part in the selection process. After having taken part in the selection process and being found lower in merit to the appellant, she cannot at this stage be permitted to turn around and claim that the post could not be filled in by direct recruitment. The reasoning of the learned Single Judge in rejecting the objection is not in consonance with the law laid down by this Court. In view of this we need not go into the other issues raised.

12. We, therefore, allow these appeals and set aside order dated 25.07.2003 of the learned Single Judge and dismiss the writ petition O.P.No.36563 of 2002 as being not maintainable. ”

8. Keeping in entire gambit of facts and circumstances and the legal position, we are of the considered view that the present OAs fails on merit and are liable to be rejected. We do so. The parties shall bear their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

O.A 345/2017

- Annexure A1 - - A true copy of Para 7(a) of Notification for “Recruitment of Civilian Personnel in Indian navy- 2016 at HQ Southern Naval Command, Kochi” published in Employment News 09-15 July 2016
- Annexure A2 - A true copy of Cut off percentage for sending call letters for the post of Multi Tasking Staff (Ministerial) published in the Notice Board of the 2nd respondent during the last week of April 2017
- Annexure A3 - A true copy of SSLC mark list of the 1st applicant
- Annexure R-1 - Copy of IHQ MOD/DCMPR letter CMPR/1001/POLICY dated 13 May 15
- Annexure R-2 - Copy of IHQ MOD/DCMPR letter CMPR/1029/RT/POLICY dated 01 Jun 15
- Annexure R-3A to R-3N – Supporting documents in respect of applicants
- Annexure R-4 - Recruitment Rules for MTS (Ministerial)
- Annexure A-4 - True copies of the postal receipts in proof of dispatch of the applications by the applicants

O.A 439/2017

- Annexure A1 - A true copy of Para 7(a) of Notification for “Recruitment of Civilian Personnel in Indian navy- 2016 at HQ Southern Naval Command, Kochi” published in Employment News 09-15 July 2016
- Annexure A2 - A true copy of Cut off percentage for sending call letters for the post of Multi Tasking Staff (Ministerial) published in the Notice Board of the 2nd respondent during the last week of April 2017
- Annexure R-1 - Copy of IHQ MOD/DCMPR letter CMPR/1001/POLICY dated 13 May 15

Annexure R-2 - Copy of IHQ MOD/DCMPR letter CMPR/1029/RT/POLICY dated 01 Jun 15

Annexure R-3 - Copy of Recruitment Rule for MTS (Ministerial)

O.A 423/2017

Annexure A1 - A true copy of Para 7(a) of Notification for “Recruitment of Civilian Personnel in Indian navy- 2016 at HQ Southern Naval Command, Kochi” published in Employment News 09-15 July 2016

Annexure A2 - A true copy of Cut off percentage for sending call letters for the post of Multi Tasking Staff (Ministerial) published in the Notice Board of the 2nd respondent during the last week of April 2017

Annexure R-1 - Copy of IHQ MOD/DCMPR letter CMPR/1001/POLICY dated 13 May 15

Annexure R-2 - Copy of IHQ MOD/DCMPR letter CMPR/1029/RT/POLICY dated 01 Jun 15

Annexure R-3 - Copy of Recruitment Rule for MTS (Min)

Annexure R-4 - Copy of the application form of the 1st applicant

Annexure R-5 - Copy of the application form of the 2nd applicant

O.A 791/2017

Annexure A1 - True copy of application invited for the post of Multi Tasking Staff (Ministerial and Non-Industrial) as per notification for the post vide employment notice No.15/37/defense/recruitment/10th / 18-25/permanent/other than Delhi, of Mathrubhumi Thozhil Vartha dated 16.7.2016 along with English translation

Annexure A2 - True copy of the application submitted by the 2nd applicant

Annexure R-1 - Copy of IHQ MOD/DCMPR letter

CMPR/1001/POLICY dated 13 May 15

Annexure R-2 - Copy of IHQ / MOD[DCMPR]SOP dated 24
Sep15

Annexure R-3 - Copy of Employment News dated 09-15 Jul
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