

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCHNo.O.A.208 of 2013
M.A.350/00307/2014

Date of order : 25.4.16 .

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Mr. K.N. Shrivastava, Administrative MemberPronab Raha, son of Shri Bijoy
Krishna Raha, aged about 51 years
was working as Nautical Surveyor,
under the Directorate of Shipping

.....Applicant

VS.

1. Union of India , service through the Secretary,
Ministry of Shipping , Road, Transport & Highways,
Transport Bhawan, Samsad Marg,
New Delhi - 110001.
2. Director General of Shipping, Jahaz Bhawan,
Walchand Hirachand Marg, Mumbai-400001.
3. The Principal Officer(I/C), Marcantile Marine
Department, Ministry of Shipping, Marine House,
Hastings, Kolkata- 700 022.
4. Union Public Service Commission, represented
by the Secretary, having its office at Dholpur
House, Shahjahan Road, New Delhi - 110069

.....Respondents

For the applicants : Mr. D. Mukherjee, counsel

For the respondents : Mr. A. Mondal, counsel
Mr. A.K. Chattopadhyay, counselORDERPer Mr. K.N. Shrivastava, A.M.

The O.A.No.208 of 2013 has been filed under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs sought in the O.A. read as under:-

"a) An order directing the respondents, particularly the Respondent Nos.1 and 4 to act in accordance with law and to produce the entire records of the selection process including the purported decision of cancellation of the entire selection process for recruitment to the post of National Surveyor for which the interview held in long back on 20.01.2011 so that conscionable justice may be done by perusing and quashing and setting aside the same;

b) An order restraining the respondents in any event from notifying the said vacancies for recruitment to the said post of Nautical Surveyor by issuing any new Advertisement and if done so, then the candidature of the applicant should be considered being an intending candidate by condoning the upper age limit as he lost his age limit due to

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delayed procedures adopted by the Respondents for the said post and if no cause shown by the Respondents then setting aside and quash the said purported decision of cancellation of the selection process and further directing the Respondents to publish the result of the said selection and if the applicant selected then recommend his name for recruitment to the said post forthwith;

c) An order directing the respondents to condone the age bar of the applicant and to allow him to participate in the next selection process for the post of Nautical Surveyor, in the event it is found that the applicant is not selected in the interview held on 20.01.2011 for the said posts and further directing the Respondents to allow the applicant to make the application for considering his candidature in any future selection process for the said post of Nautical Surveyor by condoning the age bar of 50 years, which he crossed due to delayed decision of the respondents and also for the pending judicial proceedings;

d) To pass any other or further order or orders as to this Hon'ble Tribunal may deem fit and proper."

2. The brief facts of this case are as under:-

The Respondent No.4 at the behest of Respondent No.1 and 2 published a notification in Employment News dated 22-28 May, 2010 in which at Srl. No.14 applications were invited for filling up of six posts of Nautical Surveyors in Directorate General of Shipping (D.G.S.) under the Ministry of Shipping. Out of these six posts, one for SC, one for ST, two for OBCs were reserved and the remaining two posts were unreserved. The upper age limit was 50 years for General category candidates, 53 years for OBC candidates and 55 years for SC and ST candidates. The Educational qualifications prescribed for the post were as under:-

Essential: Certificate of competency(Master Foreign Going) with 8 years service as Deck Officer of which one year must have been in the capacity of a Chief Officer on a foreign going ship, or M.Sc. degree in Maritime University, Malmo, Sweden, with 10 years service as Deck Officer of which one year must have been in the capacity of a Chief Officer on a foreign going ship.

Desirable : Extra Master's Certificate of Competency with 6 years service as Deck Officer of which one year must have been in the capacity of Chief Officer on a foreign going ship.

3. 68 applications were received against the said advertisement. After scrutiny, 15 candidates were short listed for interview(1-ST, 3-SC, 5-OBC, 6-Gen.). The applicant belongs to General category and he was amongst the 15 shortlisted candidates. The short listed candidates were interviewed on 20.01.2011 by UPSC(Respondent No.4). The results could not be declared since a candidate, namely, Captain Rakesh Johri , who, although belonged to SC category had not submitted his caste certificate due to which his candidature was rejected, filed O.A.No.29/2011 before the Bombay Bench of this Tribunal who vide order dated 13.01.2011 directed the respondents that the selection would be subject to the outcome of the O.A. In the meanwhile, some complaints were received with regard to counting of sea service in respect of a short listed candidate, namely, Captain A.B. Solanki. With regard to counting of his service as

a Cadet towards sea service, the Respondent No.2 clarified to the Respondent No.4 that service as a Cadet will not be counted towards sea service. In the meanwhile, Captain Solanki filed O.A.No.740/2011 before this Tribunal who vide order dated 30.11.2011 clarified that the respondents could go ahead with the selection process. In the midst of all these controversies, a meeting took place between the officers of Respondent No.1 and Respondent No.2 on 29.06.2012 pursuant to which the Respondent No.4 vide letter No.F.I/326(74)/2009-R-II dated 26.09.2012 informed to the Respondent No.1 that it had decided to cancel the recruitment process undertaken to fill up the six posts of Nautical Surveyors in the Directorate General of Shipping. Aggrieved by the said action of the Respondent No.4, the instant O.A. has been filed.

4. Pursuant to the notice issued, the Respondents entered appearance and filed their reply.

5. The case was taken up for hearing the arguments of the parties today. Mr. D. Mukherjee, Id. counsel for the applicant, Mr. A. Mondal, Id. counsel for the Respondents No.1,2 and 3 and Mr. A.K. Chattopadhyay, Id. counsel for the Respondent No.4 argued the case.

6. The main grievance of the applicant as espoused by his Id. counsel during the case of the argument was that the applicant who was otherwise eligible for consideration to the post of Nautical Surveyor in terms of the advertisement dated 22.05.2010 would become ineligible for consideration for the said post if the advertisement dated 22.05.2010 were to be cancelled as he has already crossed the maximum age limit of 50 years. It was also submitted that the decision of the respondents to cancel the said advertisement is without any basis and would cause immense prejudice to the interest of the applicant.

7. The Id. counsel for the Respondent No.4 stated that the decision to cancel the advertisement dated 22.05.2010 was taken in view of the fact that the selection process was getting marred due to various litigations as well as complaints relating to the eligibility criteria. The said decision was taken after consultation with the Respondent No.1.

8. The Id. counsel for Respondent No.1,2 and 3 endorsed the arguments put forth by the Id. counsel for the Respondent No.4.

9. We have carefully considered the arguments put forth by the Id. counsel for the parties and have also perused the pleadings and the documents annexed thereto. At the outset, we would like to express our anguish and disgust to the prevaricating approach adopted by the

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respondents in conducting the selection process. It is well known that any selection has to be done in terms of the prescribed Recruitment Rules(RRs). The RRs ensure that there are no rooms for any ambiguity, doubt or confusion with regard to the eligibility criteria. In the instant case, apparently there were certain windows left open for ambivalence, or else, the issue whether service as a Cadet is to be counted towards sea service or not, would not have arisen. Unfortunately, due to the cancellation of the selection process, the interest of the applicant is getting prejudiced as he has crossed the maximum age limit of 50 years, prescribed for the general category candidates. Hence the applicant would not be eligible for consideration for the said post in future. It is pertinent to note that the applicant had satisfied all the eligibility criteria for the post vis-à-vis the advertisement referred to Para (2) supra..

10. Be that as it may, we do acknowledge the essentiality of laying down the selection criteria in an unambiguous and incontrovertible terms so as to nip in the bud any future scope of avoidable litigation. In view of the fact that some controversies with regard to the eligibility criteria had cropped, it would only be appropriate to lay down the eligibility criteria in clear terms leaving no scope for any controversy later. As such, we appreciate the action taken by the Respondent No.4 in cancelling the advertisement dated 22.05.2010 in consultation with the Respondent No.1. At the same time, we are also of the view that any corrective action taken by the respondents should not prejudice the interest of the candidates, including the applicant, who are otherwise eligible for consideration for the post in terms of the advertisement dated 22.05.2010.

11. Hence, we issue the following directions:-

(a) The respondent authorities are directed to Issue a fresh notification for filling up the six posts of Nautical Surveyors in Directorate General of Shipping laying down the eligibility criteria in clear terms. The issue of counting of service of the Cadet as sea service or otherwise should be clearly indicated in the notification.

(b) Such a notification should be issued by the respondent authorities within a period of one month from the date of receipt of a copy of this order. The entire selection process should be accomplished by the Respondent No.4 within a period of six months from the date of advertisement.



(c) The applicant as well as other such candidates who were eligible for the post of Nautical Surveyor vis-à-vis the advertisement dated 22.05.2010 shall be allowed to participate in the selection process even though some of them might have crossed the maximum age limits prescribed in their respective categories.

12. With the above direction the O.A. is disposed of.

13. In view of the order passed in the O.A., no further order is required to be passed in the M.A.No.350/00307/2014. The M.A. is accordingly disposed of. No cost.

(K.N. SHRIVASTAVA)
Administrative Member
s.b

(B. BANERJEE)
Judicial Member