

CAPT. KARAN VASWANI
v.
UNION OF INDIA AND ORS.

MARCH 29, 2000

[S. SAGHIR AHMAD AND Y.K. SABHARWAL, JJ.]

Service Law :

The New Mangalore Port Trust (Recruitment of Heads of Department) Regulations, 1991—Regulations 3(i), 5, 9 & 10—Recruitment—To the post of Deputy Conservator—Requirement of 10 years experience as Master of foreign going ship or as Pilot—Nature and functions of a Master and a Pilot being similar—Whether the experiences of both the posts can be clubbed together for the purpose of recruitment—Held, Yes,—The Major Port Trusts Act, 1963—Sections 2(n) and 124—The Mangalore Port (Authorisation of Powers) Regulations, 1980—Merchant Shipping Act, 1958—ss. 3(13), 3(22).

Appellant and respondent No. 4 applied for appointment to the post of Deputy Conservator, the experience required for which was 10 years as Master of foreign going ship or in pilotage and dredging in a Major Port Trust Respondent No. 4 had the experience of 6 years as Master and 9 years as a pilot and the appellant's experience was 2 years as Master and 11 years as Pilot. After the interview respondent No. 4 was appointed. In the interview, one incident of sinking was specifically asked from the respondent No. 4. The appellant had made representation to the Government wherein it was alleged by the appellant that the respondent No. 4 had suppressed the incident of sinking. This representation was considered by the Ministry of Surface and Transport and it did not find any merit in that.

The appellant challenged the appointment of respondent No. 4 in the High Court by filing a Writ Petition, which was allowed by Single Judge holding that respondent No. 4 was not eligible to be appointed on the post as he did not possess experience as provided in the Schedule to the Registrations. In appeal the Division Bench dismissed the writ petition, holding that the experience as Master and Pilot can be clubbed together for considering 10 years experience.

A In appeal to this court, the appellant contended that the post of 'Master' does not include in its ambit the post of 'Pilot' and that the respondent was guilty of suppression of material information (the incident of sinking), which, if known, would have debarred him from appointment.

B Dismissing the appeal, this Court

C HELD : 1.1. There is no prohibition in the regulations in clubbing of the two experiences as Master and Pilot. Regulation 3(i) of The New Mangalore Port Trust (Recruitment of Heads of Department) Regulations, 1991 has equated the two experience. If the contention of the appellant is accepted, it will mean that despite having vast experience but less than 10 years as Master of foreign-going ship and having equally vast experience as a Pilot, a person would still be ineligible for being considered for the post of Deputy Conservator. [749-G-H; 750-A]

D 1.2. The post of 'Master' does not include in it the post of 'Pilot'. However that by itself does not show that the experience as a master of foreign-going ship cannot be clubbed with the experience of a pilot to satisfy the recruitment of experience provided in the regulations for the post of Deputy Conservator. [749-C]

E 1.3. The nature and functions of a Master and a Pilot are similar. Both have to possess certificate of competency as Master of foreign-going ship. The Union of India has throughout understood and implemented the stipulation about experience, to mean the total experience, either as Pilot or as a Master and clubbing the two, has considered the case of recruitment in the past as well. It cannot be said that the interpretation placed by the respondents is not reasonable or is impermissible. [750-C-E]

F 2. There is no substance in the contention that respondent had suppressed the material fact regarding sinking incident. There is no infirmity in the approach of the Ministry. Further, admittedly for the post of Deputy Conservator, neither attestation form is required to be filled nor any such form was filled which is unlike the requirement to be complied with at the time of appointment as a Pilot. [750-G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2281-83 of 2000.

H From the Judgment and Order dated 19.8.97 of the Karnataka High

Court in W.A. No. 8510-12 of 1996.

P.P. Rao, M. Rama Jois, P.P. Malhotra, T.L.V. Iyer, A.P. Dhamija; Pradeep Aggarwal, Ms. Madhurima Tatia, Sushil Kr. Jain, N.P.S. Panwar, S.N. Bhat, Ms. Smita Inna, Ms. Anil Katiyar, Subramonium Prasad and Arvind K. Sharma for the appearing parties.

The Judgment of the Court was delivered by

Y.K. SABHARWAL J. Leave granted.

In exercise of the powers conferred by Section 28 read with Section 124 of The Major Port Trusts Act, 1963, The New Mangalore Port Trust (Recruitment of Heads of Department) Regulations, 1991 have been framed. Regulation 5 provides for method of recruitment and Regulations 9 and 10 provide for application for direct recruitment and their eligibility etc. The recruitment to various posts including that of Deputy Conservator is governed by these Regulations. A post of Deputy Conservator fell vacant in November, 1994. It was sought to be filled by appointment by direct recruitment. Besides others, appellants and respondents no. 4 - Captain Subhash Kumar submitted their applications. We are only concerned with the appellant and Captain Kumar. Both were interviewed. Captain Kumar was selected and appointed as Deputy Conservator. The appellant challenged his appointment by filing a writ petition in the High Court of Karnataka. A learned Single Judge allowed the writ petition holding that Captain Kumar did not possess experience as provided in the Schedule to the Regulations and was, therefore, ineligible to be appointed as Deputy Conservator. The judgment of learned Single Judge was, however, reversed in appeal by impugned judgment dated 19th August, 1997. Union of India - respondent no.1 and New Mangalore Port Trust, respondent no.2, have all through supported the appointment of Captain Kumar. The principal question is whether Captain Kumar possesses the essential experience as stipulated in the Regulations. The experience required for the post is as follows :

“10 years experience as Master of foreign going ship or in pilotage and dredging in a Major Port Trust.”

Captain Kumar had the experience of 6 years as a Master and 9 years as a Pilot. The appellant had, at the relevant time, an experience of 2 years as Master and 11 years as a Pilot.

- A Can experience as a Master and Pilot be clubbed together for possessing 10 years experience is the question for consideration? Learned Single Judge took the view that clubbing of experience is not permissible and on that view, quashed the appointment of Captain Kumar made by the Port Trust. The Division Bench, on the other hand, held that the experience gained
- B either as a Master or as a Pilot or both together could be taken into consideration and, therefore, no fault could be found with such an interpretation placed by the Select Committee. It further held that when two views are possible, the one which the administrative authority has taken, should not be interfered with and that the view taken by Selection Committee was possible or even probable view. Thus, the appointment of Captain Kumar was upheld.
- C

- D In the hierarchy of posts, the Deputy Conservator is higher than 'Harbour Master' which post is higher than that of a 'Pilot'. These three posts, under The New Mangalore Port (Authorisation of Powers) Regulations, 1980 are defined as under :-

"Deputy Conservator' means the Deputy Conservator of the port and the officer to whom the direction and management of pilotage are vested;

- E 'Harbour Master' means the officer appointed as such by the Board to perform such duties as may, from time to time be assigned to him by the Deputy Conservator;

- F 'Pilot' means a person lawfully appointed and licensed as such by the Board subject to the authorisation of the Central Government, to pilot in the Port any vessel as directed by the Deputy Conservator or Harbour Master;"

The terms 'foreign-going ship' and 'Master' are defined in Section 3(13) and Section 3(22) of The Merchant Shipping Act, 1958 as under :-

- G "*foreign-going ship*' means a ship, not being a home-trade ship, employed in trading between any port or place in India and any other port or place or between ports or places, outside India;

- H '*Master*' includes any person (except a pilot or harbour master) having command or charge of a ship;"

In Section 2(n) of The Major Port Trusts Act, 1963, the term 'master' has been defined as under :-

“*Master*’, in relation to any vessel or any aircraft making use of any port, means any person having for the time being the charge or control of such vessel or such aircraft, as the case may be, except a pilot, harbour master, assistant harbour master, dock master or berthing master of the port;”

We have no difficulty in accepting the contention of Mr. Rao, learned senior counsel appearing for the appellant, that the post of 'Master' does not include in its ambit the post of 'Pilot'. However, that by itself does not show that the experience as a master of foreign-going ship cannot be clubbed with the experience of a pilot to satisfy the requirement of experience provided in the Regulations for the post of Deputy Conservator. According to The New Mangalore Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 1980 as amended in 1989, for the post of Pilot as also for the post of Harbour Master, it is essential to hold a certificate of competency as master of foreign-going ship issued by the Ministry of Shipping and Transport, Government of India or by Board of Trade, UK or any other Commonwealth country whose certificate of competency has commonwealth validity. For the post of Pilot it is also essential to have three years experience as Chief Officer or as a master of foreign-going ship whereas for the post of Harbour Master, it is essential to possess five years experience as a pilot after attaining proficiency in handling all types of ships with unrestricted tonnage. For the post of Deputy Conservator, when filled by promotion/transfer/deputation, officer is required to hold analogous post or with three years regular service in the lower post equivalent to or above Harbour Master. 'Analogous posts' under Regulation 3(i) of 1991 Regulations means a post of which the duties and level of responsibilities and/or the pay ranges are comparable to those of the post to which selection is to be made.

The post of Deputy Conservator is required to have variety of experience. The direction and management of pilotage is vested in Deputy Conservator. The duties to be performed by Harbour Master are assigned by him. The Deputy Conservator is thus required to have a varied experience. The Regulations stipulate 10 years' experience as Master or in pilotage or dredging in a Major Port Trust. There is no prohibition in the regulations in clubbing of the two experiences. The regulation reproduced above has equated the two experiences. If the contention of the appellant is accepted, it will mean that

A despite having vast experience but less than 10 years as Master of foreign-going ship and having equally vast experience as a pilot, a person would still be ineligible for being considered for the post of Deputy Conservator. We are unable to read any such intention in the regulations.

B It may further be noticed that the stand of the Central Government is that it has consistently implemented the Regulation taking into consideration the total experience notwithstanding that it is partly as a master of foreign-going ship and partly in pilotage. It has always considered the experience clubbed together. This is stated to being consistently followed in recruitment of heads of department in other major ports including Madras and Cochin
C where Deputy Conservator was recruited by direct recruitment method in 1994. It has also been stated that the nature and functions of a Master and a Pilot are similar. The Government states that the Master of a ship is authorised to perform the acts ordinarily necessary for the safe and proper execution of the voyage. A pilot primarily navigates within the harbour. As
D already stated, both have to possess certificate of competency as Master of foreign-going ship. The Pilot has specialised local knowledge whereas Master of a ship entering in a port, is not expected to have the detailed information about the local signals, lights, depth of harbour etc. The Union of India has throughout understood and implemented the stipulation about
E experience, to mean the total experience, either as a Pilot or as a Master and clubbing the two, has considered the case of recruitment in the past as well. It cannot be said that the interpretation placed by the respondents is not reasonable or is impermissible.

F Another contention urged on behalf of the appellant is that Captain Kumar was guilty of suppression of material information which, if known, would have debarred him from being appointed to the post in question. The Division Bench of the High Court has rightly rejected the said contention. Further we find no reason to reject the stand taken of the Port Trust that during
G interview, Captain Kumar was specifically asked regarding the sinking incident, which according to the appellant was suppressed. Moreover, on the representation of the appellant, this aspect was examined by the Ministry of Surface Transport and it did not find any merit in the assertion of the appellant about the suppression of material information. We do not find any infirmity in the approach of the Ministry. Further, admittedly for the post of Deputy
H Conservator, neither attestation form is required to be filled nor any such form was filled which is unlike the requirement to be complied at the time of

appointment as a pilot. We are not suggesting that on this account, a person can suppress any material information. We find no substance in this contention as well.

A

For the reasons aforesaid, we find no infirmity in the impugned judgment of the Division Bench. The appeals are accordingly dismissed. The parties are, however, left to bear their own costs.

B

K.K.T.

Appeals dismissed.