

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.418 of 1994

Tuesday, this the 3rd day of January, 1995.

CORAM

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR SP BISWAS, ADMINISTRATIVE MEMBER

1. K.I. Philip, Electrician HS Gr.II,  
Office of the Asstt. Garrison Engineer, E/M-II,  
Military Engineering Service,  
Naval Base, Cochin.
2. P.G.Sivaraman Pillai,  
Electrician MS Grade-II,  
Garrison Engineer (P),  
Naval Base, Cochin.
3. M. Rajan, Electrician MS Grade-II,  
Garrison Engineer(P),  
Naval Base, Cochin.
4. Narayanan Mooppan,Electrician HS-II,  
Office of the Asstt. Garrison Engineer E/M-II,  
Military Engineering Service,  
Naval Base, Cochin.

...Applicants

By Advocate Mr P. Santhalingam.

Vs

1. Garrison Engineer E/M Kataribagh(Electric/Mechanic),  
Naval Base P.O., Cochin-4.
2. Garrison Engineer (P)NW-  
Naval Base, P.O. Cochin.
3. The Commander Works Engineer,  
Naval Base, Cochin.
4. The Chief Engineer(Navy),  
Kataribagh,  
Naval Base P.O., Cochin.
5. Chief Engineer,  
Southern Command, Pune.
6. C.I. Lona, Electrician MS Gr.II,  
Office of the Asstt. Garrison Engineer E/M-II,  
Military Engineering Service,  
Naval Base, Cochin-4.
7. KL Nandakumaran Nair,Electrician HS-II,  
Office of the Asstt. Garrison Engineer E/M-II,  
Military Engineering Service,  
Naval Base, Cochin-4.

...Respondents

By Advocate Mr Varghese P Thomas, Add1.CGSC for R 1-5.

By Advocate Mr K. Shri Hari Rao for R 6 & 7.

OR D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicants who are Electricians HS (Highly skilled) Grade-II under respondents, complain that selections were made to the next higher post of Electricians Grade-I, arbitrarily. They seek to quash the selection so made.

2. Applicants appeared for a written test on 11.2.93.

Under the rules selection is to be made on the basis of a Written Examination, trade test and viva voce.

Applicants say that they were not trade tested or interviewed. Later they came to know that certain others had been selected for appointment. Upon that, they moved this Tribunal by O.A. 771/93. A Bench of this Tribunal examined the matter and recorded that the selection was to be made by holding a written examination, a practical test and a viva voce. It was also noticed that

35 marks are set apart for written test, 40 marks for practical test and 25 for viva voce. The Tribunal did not issue any positive direction. After A4 order, applicants complained to the Chief Engineer that the selection was not proper. The representations intended for the Chief Engineer was not forwarded to him and then applicants filed O.A. 388/93. That was disposed of by A11 order, directing the Chief Engineer to consider the representation.

3. After considering the representations respondent Chief Engineer issued the impugned orders, rejecting the representations and holding:

"Your allegation is not proved since no documentary proof has been provided by you in support."

4. The allegation consistently made by the applicants was that the department had not interviewed or trade tested them, that no records of interview/trade test were kept and that whatever records were available, were destroyed. Regarding destruction of records, it finds affirmation in A8 and A9 statements of respondents.

The representations were rejected for failure of applicants to produce documentary proof. Applicants cannot have documentary proof, of the destruction of documents by respondent Department. No reasonable person would have expected one who destroys records improperly to leave documentary proof thereof, for the applicants to substantiate their case before the same authority. The view taken by respondent Chief Engineer is unreasonable, to put it mildly.

5. Ordinarily in a matter like this, we would have remitted the matter for fresh consideration. But such consideration cannot yield any result and therefore, we do not propose to adopt a futile course. Besides, the controversy raised cannot be decided by the respondents as they themselves are alleged to have committed grossly improper acts.

6. Coming to the merits there is no dispute regarding the fact that the tabulation sheets or the

mark sheets were destroyed by the department. A8 and A9 reveal this and the Standing Counsel for respondents, does not dispute this fact. The course to be adopted in such a situation, is indicated by the Supreme Court in Pritpal Singh Vs. State of Haryana and others, ( JT 1994 (5) SC 245 ). In the absence of books, or other materials to ascertain the marks obtained by the candidates, necessary to examine the legality of selection, the Court ordered the selection to be cancelled, even if that may cause hardships to deserving candidates who might have been selected. Records relating to selection have to be preserved. A-9 Standing orders and A-10 show that result sheets are to be attached to the proceedings and that they are to be preserved at least for five years. Admittedly, these have been destroyed. Though a faint attempt was made by counsel for respondents to suggest that some of the records are available, no attempt was made to produce these. The only conclusion that can be reached is that the relevant documents have been destroyed, leaving no means to examine the legality of the selection.

7. We would also remind ourselves about the need for objectivity in situations like this. 65% of the marks are allotted for interview and trade test. This is a determinative segment of the marks. If a Tribunal or other authority making judicial review is in the

dark about marks in this vital area, and if the selection is to be assented to, that will open the flood gates of arbitrariness and caprice in areas of public employment referable to Articles 14 and 16.

A Constitution Bench of the Supreme Court in S.G. Jaisinghani Vs. Union of India and others (AIR 1967 SC 1427) observed that:

"The absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be continued within clearly defined limits. ....Where discretion is absolute, man has always suffered."

In the instant case, arbitrariness and the vice that flows from it, is stamped on the forehead of the selection process. No record is maintained, and there was not even any minutes of the proceedings.

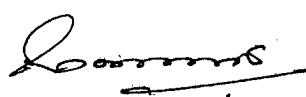
The need for such is highlighted by the Supreme Court in D.V. Bakshi Vs. Union of India, (AIR 1993 SC 2374).

8. It follows that a selection has been made arbitrarily. Vital records have admittedly been destroyed. The modalities of selection and reasons therefor remain in the dark.

9. We quash the selection and direct the competent authority to make a fresh selection considering the candidature of those who participated in the disputed selection. Those selected and appointed already will be allowed to remain in position until the selection process is completed. The application is allowed with costs of Rs.1000/- (Rupees One thousand only). Respondents will be

free to recover the costs from the officials who have destroyed the tabulation sheets and other material records contrary to the departmental rules contained in A-9 and A-10.

Tuesday this the 3rd day of January, 1995.



S.P. BISWAS  
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR(J)  
VICE CHAIRMAN