

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 501 of 2003

Thursday, this the 8th day of December, 2005

C O R A M :

**HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

1. K. Mohammed Hassan,
Kunhali House,
Edachery, Androth Island,
Union Territory of Lakshadweep : 682 551
2. T.P. Kinanath,
S/o. Mohammed Kunhi Maral,
Thithiyapada House, Kalpeni Island,
Union Territory of Lakshadweep.
3. Ismail,
S/o. Mohammed,
Maliambra House,
Kilthan Island,
Lakshadweep.

... Applicants.

(By Advocate Mr. P.K. Ibrahim)

V e r s u s

1. Union Territory of Lakshadweep represented by its
Administrator, Kavarathi P.O.,
Union Territory of Lakshadweep.
2. The Port officer,
Department of Posts,
Kavarathi P.O.,
Union Territory of Lakshadweep.


... Respondents.

(By Advocate Mr. S. Radhakrishnan)




O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicants, the native of Union Territory of Lakshadweep, are belonging to Scheduled Tribe Community. It is the case of the applicants that pursuant to the notifications issued by the 1st respondent for selection of 6 posts of Lascars to be employed on boats of the Department of Lakshadweep, they applied for the same. A test was conducted followed by an interview. The interview Board was constituted by the 1st respondent on 22.3.1999 for selection to the post of Lascars and accordingly, interview was held between 6.4.99 to 9.4.99. The interview Board prepared a list (A/1) of 16 candidates for being appointed to the 6 notified vacancies and 10 anticipated vacancies which are available on promotion of Lascars into Drivers. The Board also put the names of two candidates in the waiting list. The applicants are at serial Nos. 8, 9 and 14 respectively in the A/1 select list. According to the applicants, A/1 select list was prepared after conducting a detailed selection process involving swimming test to assure their endurance in the sea. Nearly 452 candidates were called for interview. The selection list so prepared remained unattended more than one year. While so, ignoring the A/1 select list, the 2nd respondent issued notification (A/2) to fill up 2 posts of Boat Lascar in the pay scale Rs. 2550-3200 and invited applications from candidates who have passed 4th standard and experience as Lascar



in boat/odam etc. That A/2 notification was challenged by persons at Serial Nos. 1 to 3 in A/1 select list alongwith few others and requested the respondents to fill up the vacancies from the earlier select list prepared by the Interview Board. Thereafter, the said selection process was abandoned and appointed the candidates at serial Nos. 1 to 6 of A/1 select list. The 1st applicant was given an offer to the post of Boat Lascar vide A/3 order dated 6.7.2002 clearly stating that if he accepts the offer on the terms and conditions referred to therein, he should intimate the fact in writing to the Lakshadweep Administration within 30 days. The applicant accepted the offer vide A/4 letter dated 19.7.2002. After a lapse of 3 months of submitting the A/4 letter, the 2nd respondent vide A/5 letter dated 22.10.2002 communicated the 1st applicant regarding cancellation of the offer of appointment (A/3) issued to him. In the said letter it was stated that the approved select list prepared for the post had already exhausted and there was no valid and approved list. Applicants submitted that this cancellation was without any bonafides inasmuch as out of 16 names in the A/1 select list, only 6 candidates have been appointed. A1 list was prepared taking into account not only the 6 notified vacancies but also the 10 anticipated vacancies which was approved by the first respondent. This was not revised nor it was cancelled by the proceedings of the 1st respondent. The 2nd respondent without any authority and without consultation of the first respondent requested the Interview Board to revise A/1 select list and submit a fresh list



recommending candidates only for 6 notified vacancies. However, the 1st applicant challenged the A/5 order of the respondents in O.A. No. 10/2003 and this Tribunal without going into the merits of the case disposed of the said OA vide order (A/7) dated 7.1.2003 directing the 1st respondent to consider the representation made by the applicant against A5 and give him a reply within a period of two months. In compliance of the A/7 order of this Tribunal, the first respondent passed A/8 order dated 5.3.2003 stating that the A/1 list has no validity and the candidates selected as per A/2 list were already posted. The applicant was offered appointment erroneously on the basis of A/1 list which was not the approved select list. Aggrieved by the orders A/6 and A/8, the applicant has filed this OA seeking the following main reliefs:

- "(i) Call for the records leading to Ann. A6 and Ann.A8 and quash the same;
- (ii) Declare that the first applicant is entitled to be appointed in terms of Ann.A3 reckoning Ann.A1 select list for the purpose of appointment of Lascars;
- (iii) Direct the respondents to appoint the first applicant forthwith in terms of Ann.A3;
- (iv) Direct the respondents to fill up the vacancies in the post of Lascars from and out of the A1 select list."

2. The respondents have filed a detailed reply statement contending that the applicant alongwith 452 candidates were considered for appointment to the post of Boat Lascar against the 6 notified vacancies.

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There were 16 persons in the so called select list A/1 wherein the applicants' names figured at 8, 9 and 14 and that list was superseded by A/6 list published on 15.12.1999. As per A/6 list, number of persons in the list was reduced to 6 with one name in the waiting list in which in which the applicants' names did not figure. A/3 offer of appointment letter was issued to the first applicant on the basis of A/1 list which was cancelled by A/5 order since the A/1 select list was not a valid one. The recommendations of the Board have to be approved by the competent authority. Requisition was sent to the Employment Exchange to sponsor candidates for six notified vacancies of Boat Lascars in the Department of Science and Technology. The Interview Board ought to have recommended the names of 6 persons only whereas A/1 list contained 16 names, which was not approved by the competent authority and returned the same to redraw the select list as per rules. Accordingly A/6 list was prepared which was duly approved by the competent authority. Select list can be prepared and appointment can be made only for the vacancies duly notified. As per R/1 requisition, there were six vacancies of Lascars in the Department of Science and Technology which were filled up by appointing all candidates from Annexure A6 list. The contention of the applicants that the respondents abandoned the selection process pursuant to A/2 was not correct. In pursuance of A/2 notice for the 2 notified vacancies, 219 candidates were interviewed by the Interview Board. The Board recommended names of 2 candidates for appointment


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against the said vacancies and based upon the said recommendation by the Board, appointment letters were issued and they were appointed. The offer of appointment (A/3) issued to the first applicant was an inadvertent mistake, which was corrected by A/5 cancellation order, and therefore, he is also not entitled to any relief.

3. The applicant has filed a rejoinder reiterating the contentions made in the O.A. and further adding that A/6 rank list got prepared at the instance of the 2nd respondent superseding A1 rank list made by the selection committee constituted by the 1st respondent. It is specifically contended that the 1st respondent has not issued any order calling for fresh list canceling A1 rank list. Had A6 rank list been cancelled the same would not have found place for future appointments in the recruitment file. The action of the 2nd respondent in seeking fresh rank list suffer from legal malice, which is apparent on the face of the record.

4. We have heard Mr. P.K. Ibrahim, learned counsel for the applicant and Mr. S. Radhakrishnan, learned counsel appearing for the respondents.

5. This O.A. was finally heard and reserved for orders on 31.10.2005. Thereafter, on the same day, one Mr. P.P. Cheriya Koya, who has been selected for the post of Boat Laskar under the respondents as per order dated 5.10.2005, has filed M.A. Nos. 1019/05 and 1020/05 through his



counsel, Mr. N. Nagaresh, praying for impleading him as 3rd respondent and to vacate the interim order already granted in this O.A. The O.A. was posted "For being spoken to" on 14.11.2005 for the purpose of consideration of these M.As. Both the M.As were considered and dismissed the same vide order of this Tribunal dated 14.11.2005 pointing out that at this stage, third party's intervention is not called for. The O.A. was again reserved for orders.

6. The learned counsel appearing for the parties took us through various pleadings, evidence and material placed on record. Learned counsel for the applicant would argue that A/6 list has no significance inasmuch as it was made only at the instance of the second respondent. He is not the competent authority to approve the list and as such, the A/6 cannot be said to be an approved list and cannot be the base for appointment. The offer of appointment was made validity of A/1 list to the first applicant and he has accepted the said offer and in the circumstances, there is no go back since the contract of appointment is complete and a right has accrued to the 1st applicant for appointment. A/5 cancellation was made only after issuance of A/4. A/8 order canceling A/3 is vitiated by mala fides and wrong appraisal of the facts. The learned counsel for the respondents on the other hand, persuasively argued that the select list can be prepared and appointment can be made only for the vacancies duly notified. There were only 6 vacancies which were filled

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up by appointing candidates from A/6 list and that list has been fully exhausted. A/2 notice was published to fill up 2 vacancies in the Department of Post and an interview was conducted. The respondents had not abandoned the selection process pursuant to A/2 as alleged by the applicants. When the respondents found that the offer of appointment issued to the 1st applicant was due to a mistake, they cancelled the same vide A/5 memo. A/1 list was suggested by the Interview Board without taking into account the notified vacancies. It was not open to the Interview Board to determine the number of vacancies as was done in this case. The Interview Board had exceeded its jurisdiction and acted contrary to the instructions on the subject. As per the instructions of the 1st respondent, the Interview Board reconsidered the matter and furnished the revised list A/6, which was prepared as per rules. The Port Officer is the cadre controlling officer in respect of Boat staff i.e., Lascars, Drivers etc. and it is the responsibility of the Port Officer to initiate action for filling up the vacancies of the above posts. The Port Officer is also the appointing authority in respect of Lascars and Boat Drivers. It is admitted that the persons at Sl. No. 1 and 2 in A/6 list was appointed in the Port Department on the basis of subsequent selection. The applicants are not included in the approved select list and, therefore, they have no right in claiming appointments.

7. We have given due consideration to the arguments advanced by



the learned counsel for the parties and have gone through the selection files/proceedings produced on behalf of the respondents.

8. There is no dispute as to the facts that the applicants were qualified for consideration to the post of Boat Lascar at the time of inviting application and subsequently, it was said that they were overage. Therefore, the applicants were made ineligible for any post under the Lakshadweep Administration. The respondents have invited applications for 6 posts of Boat Lascar and according to the applicants, the Interview Board had prepared a list of 16 candidates for being filled up against the 6 notified vacancies and 10 anticipated vacancies which were to be available on promotion of Lascars into Drivers. Two persons were also put in the waiting list. The contention of the respondents is that the Interview Board can recommend persons only against the the notified vacancies. The Interview Board ought to have recommended names of 6 persons only, therefore, the A/1 list which contained 16 names, was not accepted by the competent authority. The relevant portion of A/1 proceedings is reproduced hereunder for better elucidation:

"The Board constituted by the Administrator vide F.No. 1/20/98-Port dated 22.3.99 for the selection of Lascars conducted the interview from 6.4.99. Four hundred and fifty two candidates have appeared for the interview, All the candidates appeared were having required qualification as per the Recruitment Rules. The interview consisted of swimming test to assess their endurance in the sea and oral / practical interview. In the swimming test five minutes were given for swimming

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approximately a distance of 100 meter and all those could complete the distance in 5 minutes were declared as fit on the endurance test.

There are six notified vacancies. However, on verification it is found that 10 anticipated vacancies are also available due to promotion of Lascars into Drivers etc. Thus there will be 16 posts available for appointment. Therefore, according to the performance of the interview 16 candidates are ranked as per their merit. First 6 candidates are recommended against the 6 notified vacancies and the remaining 10 candidates are recommended for the anticipatory vacancies."

9. Admittedly, the applicants are at Serial Nos. 8, 9 and 14 respectively in A/1 list. A/1 list was signed by the Chairman and the Members of the Selection Board. It also listed two candidates on waiting list. Subsequently 2 posts were notified for the same post vide A/2 notice dated 11.4.2001. It appears that this was challenged by the persons at Sl. Nos. 1 to 3 in A/1 list and thereafter, the persons at Sl. Nos. 1 to 6 were given appointment as Lascars. The 1st applicant was also given an offer to the post of Boat Lascar vide A/3 order which was accepted by him as per A/4 of his letter. Thereafter, he was served with A/5 memo stating that his offer stands cancelled since the A/1 select list was not an approved list by the competent authority. The applicant approached this Tribunal in OA No. 10/2003 for redressal of his grievance and this Tribunal vide its order (A/7) dated 7.1.2003 directed the respondents to consider his representation within a period of 30 days. In compliance of the said order, the respondents passed A/8 order dated 5.3.2003 rejecting


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his claim for appointment. In A/6 revised proceedings of the Interview Board, the selection of persons for the 10 anticipatory vacancies already recommended as per A/1 proceedings has been deleted with one waiting list candidate. This list showed the same persons who were selected as per A/1 list at serial No. 1 to 6 for the notified 6 vacancies and sl. No. 7 was put on waiting list. So there is no deviation in the merit between these two lists, except the persons shown at S. No. 8 to 16 plus 2 waiting list persons were deleted from A/1 list.

10. The short question for our consideration is whether A/1 select list has been prepared on the basis of the vacancy position approved by the competent authority. The respondents have no case that A/1 list is prepared without following the due process of selection. Their case is that the list can be prepared only for the vacancies duly notified. As per Annexure R1(1) requisition form filed by the respondents, in para 4 it was written - Number of posts : 6 (six). On going through the records produced by the respondents, it also reveals that the respondents have an intention to select persons against 10 anticipated vacancies as well. The respondents had taken pain to call for 452 candidates and after rigorous test, A/1 select list was prepared. The duly constituted Selection Committee is quasi-judicial authority for making selection for notified vacancies as well as for anticipatory vacancies, which cannot be said to



be a mistake. Apart from that as per R/4 (A/6) Proceedings the Revised Interview Board was met on 15.12.1999 as per the direction of Port Officer to review the earlier recommendation of 16 candidates anticipating 10 more vacancies. Now Board was asked to recommend candidates only for 6 notified vacancies. Accordingly, the Board recommends the first six names serially from the earlier proceedings for the six vacancies and the seventh name for the wait list candidate out of the same selection. This proceeding of the Selection Board does not reveal that the 10 names which have been recommended earlier towards anticipatory vacancies was a mistake. It appears that the Board obeyed the instructions of the Port Officer and reviewed it as per his direction. It is also quite obvious that A/1 list had not cancelled by any proceedings. The respondents submitted that there was no need to cancel the entire selection but only revision of the same would serve the purpose without disturbing the merit position. A subsequent notification A/2 came to be issued for filling up 2 posts of Boat Lascar while A/1 list was in existence, which gives an indication that atleast there were two vacancies and 2 persons could be accommodated based on their merit in A/1 and A/6 lists. The respondents would argue that they are at liberty to cancel/modify or revise the selection if it was not prepared according to the notified vacancies and the mistake was apparent on the face of the record. Learned counsel for the respondents brought to our notice the following decisions to canvass for a position that in selection



matters, the interference of the Tribunal is not called for. The power to judge comparative merit of candidates and fitness for post is a function of duly constituted Selection committee. The Tribunal cannot sit as an Appellate Court over the decision of the respondents-department.

(1991) 3 SCC 47, Shankarsan Dash vs. Union of India

1996 (1) KLT 344, Kerala Agricultural University vs. Gopinathan Unnithan;

AIR 1997 SC 2618, Durga Devi and Anr. vs. State of H.P. And Ors.;

11. From the decisions cited supra, it is clear that the Tribunal is not justified in interfering with the selection or selection process. However, one of the contentions that was advanced by the learned counsel for the applicants is that the applicant No. 1 has already been offered appointment vide A/3 order dated 6.7.2002 which has been accepted by him as borne out by A/4 letter dated 19.7.2002. The A/6 revised proceedings of the Interview Board, even assuming it is taken for granted, was issued on 15.12.1999. If the contention of the respondents that the earlier proceeding (A/1) was erroneous and the A/6 proceedings are valid, is accepted, we are at a loss to understand how A/3 order came to be issued to the 1st applicant after lapse of two and a half years. It gives an indication that the respondents have considered the 2 vacancies occupied by the merit listed candidates in A/6 to a subsequent selection of Notification A/2. So remaining 4 merit listed candidates in A/6



alongwith the wait listed candidate at No. 5 and the applicant as next in merit as per A/1 have been considered since A/1 list has not been cancelled yet. We are, therefore, of the view that the first applicant was on a different footing than the applicants No.2 and 3 in this case. Even assuming that the selected candidate has no indefeasible right to be appointed as per the decisions of Hon'ble Supreme Court cited above, in the case of first applicant, he got the right to be appointed when he has been given offer of appointment vide A/3 order as well as his acceptance vide A/4 letter. The applicant cannot be denied appointment when the contract, in the sense the offer and acceptance, is complete. The respondents cannot be allowed to wriggle out from their contractual obligation. In this view of the matter, it cannot be said to be a mistake on the part of the respondents, but was a conscious decision taken as borne out from the records produced by them. Therefore, the chance of appointment for the first applicant cannot be denied though the applicants 2 and 3 have no valid ground for the reliefs as sought in the OA.

12. In the conspectus of the facts and circumstances and the detailed discussion made above, we are of the view that the first applicant is entitled to the relief as prayed for and accordingly, we quash the proceeding A/6 and the A/8 order to the extent it does not include the name of the first applicant and declare that he is entitled to be



appointed as per the offer given to him vide order A/3 dated 6.7.2002. The respondents are directed to pass appropriate order in respect of the first applicant in terms of the observations made above within a period of one month from the date of receipt of a copy of this order.

13. As far as the applicants 2 and 3 are concerned, they have no indefeasible right to be appointed as per the decisions of the Hon'ble Supreme Court cited above and accordingly their prayer is rejected.

The O.A. is partly allowed. In the circumstances, no order as to costs.

(Dated, the 8th day of December, 2005)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER

cvr.