

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.508/2002

Friday this the 5th day of November, 2004.

C O R A M

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

Mohammed Rafeeq K.P.
Keelappura House
Androth Island
U.T.of Lakshadweep

: Applicant

[By Advocate MR.P.K.Ibrahim]

Vs.

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. The Executive Engineer,
Department of Electricity,
Union Territory of Lakshadweep,
Kavaratti.
3. T.Akbar Ali,
Thekkiloda House,
Agatti Island
4. Ahamed Manikfan V.K.
Vadake, Kadeechappada,
Agatti,
Union Territory of Lakshadweep,
5. Abdul Hameed Khan P.
Panthal, Kadmat,
Union Territory of Lakshadweep : Respondents

[By Advocate : Mr.S.Radhakirshnan (R 1-2)
Mr.A.V.M.Salahudeen(R 3)
Mr.M.K.Sreejesh (R 4)]

The application having been heard on 09.09.2004, the
Tribunal on 5.11.2004, delivered the following :

O R D E R

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant is a native of Androth Island in the Union
Territory of Lakshadweep. He passed SSLC in the year 1989 and
joined the Industrial Training Department in 1992 and completed

the course in Industrial Training Institute, Kalamassery (Annexure A-1). Thereafter he renewed his registration in Employment Exchange at Kavaratti and got employment as Electrician under P.P.Koyamma from 06.11.1994 to 09.03.1997 (Annexure A-2). Applicant joined Shore Mechanics Training Course in CIFNET and qualified the said course in March 1998 and passed the examination (Annexure A-3). Again he renewed his registration in the Employment Exchange in 1998 (Annexure A-4). He joined as Electrician under the contractor P.Mohammed Kasim and in order to testify, Annexure A-1 certificate is produced. Annexure A-8 certificate shows that the applicant had worked under P.Mohammed Kasim with effect from 18.12.2000 to 10.03.2001. In response to the notification for the post of Chargeman/Meter Mechanics/Electrician/Mechanic (Annexure A-7), the Employment Exchange forwarded the names of about 64 candidates, who were called for written test held on 12.03.2001 and candidates who obtained 40% marks in the test were called for interview. Out of 12 candidates, applicant was one among the 12 candidates who were called for the interview. According to the applicant, the interview's result was not published. The applicant made several representations (Annexure A-8) and finally he was served with an order dated 11.01.2002 stating that " none of the candidates appeared for the interview could be considered suitable for appointment to the post of Chargeman/Meter Mechanic ." Therefore, the selection list was cancelled (Annexure A-9). Subsequently, the applicant came to know on 19.02.2002 that the respondents are considering to appoint the 3rd respondent and two others to the post of Electrician. The said action has been initiated on the directions of the Hon'ble High Court in O.P.No.37002/2001 which declared that the cancellation of the selection list was illegal and unsustainable and directed the respondents to appoint the 3rd respondent and 2 others.

2. The 3rd respondent filed OA 930/2001 before this Tribunal for appointing him as Electrician. The Tribunal dismissed the OA against which an O.P was filed where the Hon'ble High Court passed an order against the cancellation of the order of selection. Since the applicant was not made a party in the said judgment it affected his interest. He was denied appointment being first in the same list and ranked No.7 in the interview board. The applicant is having the required qualification whereas the third respondent did not have experience of 5 years as on the date of notification. Therefore, the applicant's name should have been included first in the said list. A Review Petition 423/2002 was filed before the Hon'ble High Court which was disposed of holding that " if the review petitioner was actually qualified or if persons at Sl.Nos. 6, 7 & 11 in the rank list were not actually qualified as alleged by the review petitioner, the review petitioner will have to challenge the cancellation of the rank list and obtain a declaration that he was qualified and eligible to be considered for appointment. Any observation in the judgment in O.P.No.37002/01 will not stand in the way of the review petitioner agitating his grievance before the appropriate forum." (Annexure A-11). Respondents action is without any bonafides to favour 3rd respondent. They have submitted before the Hon'ble High Court that only 3 candidates have 5 years experience out of the 12. The respondents could not verify as to whether there was any other candidates among them who have 5 years experience as on the date of interview. The Hon'ble High Court passed the judgment relying on the statement made by the respondent. Aggrieved by the non selection, the applicant has filed this Original Application seeking the following reliefs:-



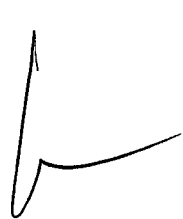
- (i) Call for the records of the interview and rank list prepared in relation to the post of Electrician/Chargeman conducted on 12.03.2001 and 13.03.2001 and quash Annexure A-9 (a) and 9 (b) in so far as it affects the selection of the applicant;
- (ii) declare that the applicant is entitled to be appointed as Electrician/Chargeman in preference to the 3rd respondent or any other being first in the rank list prepared by the Interview Board;
- (iii) to direct the respondents 1 & 2 to appoint the applicant as Electrician against the vacancy notified as per Annexure A - 7 forthwith;
- (iv) award the cost of the proceedings;
- (v) pass such other orders or directions as may be deemed just, fit and necessary in the facts and circumstances of the case.

3. Respondents 1 and 2 have filed a reply statement contending that the issue has been finally settled by the Hon'ble High Court vide Annexure A-10 order. As per that order the cancellation order will apply only to the selection of unqualified hands included in the select list and it will not affect the selection of Shri T.Akbar Ali, Shri Ahmed Manikfan and Shri Abdul Hameed. Sl.No. 6, 7 & 11 respectively. It also directed the respondents 1 & 2 to make appointments against the two notified vacancies in the order of their merit.

4. The applicant filed review petition 426/2002 wherein the respondents contended that out of the 12 candidates only 3 persons were actually qualified. Strict compliance of Annexure A-10 judgment was also ordered in the review order and in compliance of the directions of the Hon'ble High Court, the respondents appointed Shri T.Akbar Ali (Sl.No.6) and Shri Ahmed Manikfan (Sl.No.7) and posted them against the two notified

vacancies of Electrician on 12.07.02 and 11.07.02 respectively. The representation submitted by the applicant was rejected by Annexure A-9(a) order dated 11.01.2002. As per the notification, the qualification prescribed is SSLC with ITI certificate in Electrician or Wireman with 5 years experience in the field. The applicant does not fulfil the qualification prescribed under Recruitment Rules. Though the respondents received the name through the Employment Exchange the column against experience against the name of the applicant in the Annexure R 1 (a) was left blank. Therefore, the applicant's candidature was rejected due to non-possession of the required experience for the post of Charge man/Meter Mechanic/Electrician etc. The applicant was awarded with a Wireman licence on 20.07.1996 and he was permitted to undertake all kinds of wiring works at Androth under the supervision of a valid permit holding supervisor. The said contractor Shri P.P.Koyamma is neither having any valid certificate of competency as Electrical Supervisor nor an Electrical Contractor Licence issued by the competent authority as per Indian Electricity Rules, 1956. Therefore, the certificate issued to the applicant by the contractor cannot be considered as valid for acquiring employment under the Government. No application for the extension of permission to carry out the wiring works beyond 19.07.2001 has been received. The appointment of persons at Sl.Nos. 6 & 7 in compliance of the order of the Hon'ble High Court is perfectly in order. The direction of the Hon'ble High Court was to appoint the candidates reflected at Sl.No.6,7 & 11 of the said merit list drawn by the interview Board as they possessed the required


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experience of 5 years prescribed in the relevant Recruitment Rules.. The applicant did not possess the required qualification as he has not produced any valid competency certificate proving his five years experience at the time of interview, but only produced Annexure A-5 certificate showing that he has two years experience at the time of interview. Therefore, a candidate without 5 years of working experience in any of the field prescribed in the Recruitment Rules cannot be considered as fully qualified for selection inspite of he being ranked first in the merit list. The applicant had never produced certificates before the authorities nor in the review petition and the certificate subsequently produced is only a illegal certificate with a malafide intention to prove that he acquired 5 years experience in the field.

5. The 3rd respondent has filed a separate reply statement contending that after passing SSLC he underwent two years training at ITI, Palakkad and passed the National Trade Certificate Course.(Annexure R-3 (a)). He acquired the licence from the Kerala State Electricity Licensing Authority to carry out the work and he had been attending the wiring and related works. The Department of Electricity, Lakshadweep had granted permission to carry out internal wiring of building for five years from 06.07.1998. He has got more than 5 years experience in the field of Electrician. Annexures R 3 (b) to (e) are the certificates issued to testify the same. The applicant has not challenged Annexure A-9 (b) orders cancelling the list. He has also reiterated the contention of the official respondents.

..7/-



6. The applicant has filed rejoinder contenting that Annexure A-10 judgment passed by the Hon'ble High Court is only on account of the specific stand taken by the Respondents 1 & 2 in their statement. The Hon'ble High Court has no occasion to testify the veracity of the statement made by the Respondents 1 & 2. As far as the 3rd respondent is concerned the experience prior to the qualification has been considered and Annexure R 3 (b) certificate produced by the applicant should not have been rejected. The Respondents did not give an opportunity to the applicant and others sponsored by the Employment Exchange to produce the experience certificate of 5 years.

7. The official respondents filed additional reply statement contenting and reiterating the stand taken by them earlier. The 4th respondent has also filed separate reply statement supporting the stand taken by the official respondents.

8. Shri P.K.Ibrahim appeared for the applicant and Shri S.Radhakrishnan appeared for the official respondents 1 & 2. Shri AVM Salahuddeen appeared for R 3 and Shri M.K.Sreejesh appeared for R 4.

9. We have given due consideration to the pleadings, evidence and material placed on record. Learned counsel for applicant argued that the applicant was not given an opportunity to produce the relevant documents which should have been insisted even before holding the written test. None of the candidates are qualified for want of experience resulting

into cancellation of the proposed interview. When the matter came up for hearing before the Hon'ble High Court, the respondents misguided the Court stating that the three candidates appearing at Sl.No.6, 7 & 11 are having the required qualifications which was basically wrong and based on the said submission, the Hon'ble High Court passed the order referred to above. But in the review order, the matter is left open.

10. Learned counsel for respondents argued that the applicant has no locus stand to file this petition nor has he challenged the cancellation order. However, candidates at Sl.No.6 & 7 in the list were given employment exclusively on the basis of the direction of the Hon'ble High Court.

11. We have given thoughtful consideration to the arguments advanced by the learned counsel on both sides. It is an admitted fact that 64 candidates were called for written test out of which 12 candidates, including the applicant, were qualified for the interview. Finally it is stated that the list prepared by the Board is found to be defective as it contains those names of candidates who do not possess the requisite experience and are thus not qualified as per the Recruitment Rules. Therefore, the list furnished by the Board has been cancelled by the competent authority and a notice to the effect was published in the notice board on 22.05.2001 showing that none of the candidates appeared for the interview could be considered suitable for appointment to the post of Chargemen/Meter Mechanic. The competent authority has decided to conduct the test afresh so as to make a proper selection of

qualified hands on merit to the posts strictly with reference to the provisions prescribed in the Recruitment Rules. In earlier occasion when the applicant was not called for interview, he filed OA 1050/01 before this Tribunal, which was disposed of vide order dated 29.11.2001 with a direction to the respondents to consider the representation and to give him appropriate reply which was not given. It is also submitted by the respondents that the applicant ranked 1st in the merit list. In the impugned order dated 11.01.2002, it was shown that none of the candidates in the rank list possess the requisite experience. It is also pertinent to note that the list became defective only on the sole ground of inexperience of all the candidates. In the second scenario, when the matter was taken up by the candidate at Sl.No.6 against the order of this Tribunal in OA 930/01 in O.P.37002/01-S the specific stand taken by the respondents in the reply statement as quoted by the Hon'ble High Court, is as follows :-

"It is also stated in the said statement filed on behalf of respondents 1 & 2 that out of the 12 candidates ranked in the order of their merit based on the performance in the written examination and interview, only the candidates at Sl.Nos. 6,7 & 11 were actually qualified, it is also stated that the petitioner whose name was included as Sl.No.6 was qualified."

12. The applicant in this O.A was not a party to the said O.P. Accepting the averment of the respondents before the Hon'ble High Court, out of 12 candidates, 3 were qualified viz., Sl.No. 6, T.Akbar Ali, Petitioner in the O.P and Sl.No.7 Ahamed Manikfan V.K. and Sl.No.11 Abdul Hameed. The remaining 9 candidates were not qualified and considering that among the

three qualified candidates the petitioner in the O.P. secured the highest rank, he was directed to be given employment. The operative portion of the judgment of the Hon'ble High Court is as follows :-

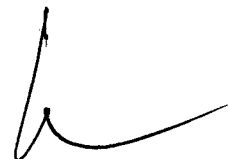
" We hold that the cancellation ordered in Ext.P 8 will apply only to the selection of unqualified hands included in the select list and that it will not affect the selection of Mr.T.Akbar Ali, Mr.Ahamed Manikfan V.K. and Mr.Abdul Hameed (Sl.No.6,7 and 11 respectively). The impugned order Ext.P 10 of the Central Administrative Tribunal is set aside. Ext. P 8 notice also is set aside to the extent it affects Mr.T.Akbar Ali, Mr.Ahamed Manikfan V.K. and Mr.Abdul Hameed. We also direct respondents 1 and 2 to make appointment to the notified vacancies from among the above mentioned persons in the order of their merit."

13. Having made such assertion the Hon'ble High Court also observed that "it cannot be presumed that the zone of consideration for the interview was likely to be changed had the unqualified candidates not been called for interview. The assumption in the counter affidavit that the mistake was committed by the Interview Board appears to be wrong. Whether the candidate possessed the prescribed experience qualification was to be considered by the authority concerned before calling them for written test and interview."

14. The applicant was not aware of these proceedings and he has filed Review Petition No. 423/02 -S before the Hon'ble High Court in which the following observations been made.

If the review petitioner was actually qualified or if persons at Sl.No.6,7 and 11 in the rank list were not actually qualified as alleged by the review petitioner, the review petitioner will have to challenge the cancellation of the rank list and obtain declaration that he was qualified and eligible to be considered for appointment. Any observation in the judgment in

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O.P.No.37002/2001 will not stand in the way of the review petitioner agitating his grievance before the appropriate forum. We also make it clear that under the cover of this order or on the ground of pendency of any petition that may be filed by the review petitioner, respondents 1 and 2 shall not refuse or delay the implementation of the directions in the judgment in O.P.No.37002/2001. If they do so they will be liable to be proceeded against in accordance with law."

15. From the above, it is seen that if the review petitioner was actually qualified or if persons at Sl.No. 6, 7 & 11 in the rank list were not actually qualified as alleged by the review petitioner (the applicant in this OA), the review petitioner will have to challenge the cancellation of the rank list and obtain declaration that he was qualified and eligible to be considered for appointment.

16. Now the applicant is challenging through this O.A the cancellation of the rank list and for a declaration that he is having the requisite experience in preference to other candidates. Actual facts have to be verified in this context. Therefore, on our direction the respondents had produced the selection file and we have perused the same.

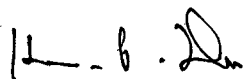
17. As rightly observed by the Hon'ble High Court in the said O.P. that the candidate's possession of the required experience and qualification should have been considered before calling for written test, which is not done in this case. The stand of the respondents is that none of them qualified and they cancelled the selection list. The Hon'ble High Court found that the three of them are qualified. As per the educational qualification is concerned, there is no dispute. In the notice dated 24.09.2000 (Annexure A-7) the essential qualification is SSLC pass, with ITI certificate in Electrician or Wireman or

Mechanic Diesel with 5 years practical experience in the field. The applicant has produced experience certificate from Mr.P.P.Koyamma, a registered contractor from 06.11.1994 to 09.03.1997 and also another certificate from one P.Mohammed Kasim, contractor stating that he has got experience from May 1998 and the certificate was issued on 18.12.2000. Thereafter, he has again issued a certificate Annexure A-6 by the same contractor stating that the applicant is working as an Electrician from 18.12.2000 onwards till 10.03.2001. Obviously, this certificate is subsequent to the notification. Therefore, clubbing altogether Annexure A-4 and A-5, applicant do have 5 years experience. The question is whether this certificate is authenticated. The case of the respondent is that the contractor has had no certificate of competency. But subsequently the applicant has produced the same to substantiate his claim. Admittedly, these contractors are taking the contract work of Government under the Lakshadweep Administration. But on going through the records, we find that respondent No. 3 has produced a certificate Annexure R-3 (a) for a period from 1994 to 1997 issued by the General Manager, Bangaram Island Resort, Lakshadweep and nothing is produced to testify the validity of the certificate and the competency of the said person, as a Supervisor under the Indian Electricity Rules. It appears that the 3rd respondent has attained his training even before he passed ITI. The respondents have not stated the date when the 3rd respondent had obtained the wireman licence. For all these reasons, the candidature of the applicant for the post in question cannot be rejected in such a discriminating manner. Therefore adopting the yardstick the respondents had considered and urged before the Hon'ble High Court that respondents No.3 & 4 are having sufficient experience as notified, we find no justification in rejecting the applicant's case as well.

18. Considering the facts and circumstances of the case and the detailed discussion made above, we are of the view that the cancellation of the merit list so far as the applicant is concerned, has been passed without due application of mind which is not sustainable in law and the applicant is eligible to be considered for the post as qualified especially when he is first in the rank list. In the result, we quash Annexure A-9 (b) in so far as cancelling the rank list in respect of the applicant's selection is concerned, and declare that the applicant is entitled to be appointed as Electrician/Chargemen, but not in preference to the 3rd and 4th respondents. Since their appointments were granted in accordance with the orders of the Hon'ble High Court in O.P.No.370112/01-S. In the given circumstances, we direct the respondents to appoint the applicant in the available vacancy and issue appropriate orders within one month from the date of receipt of a copy of this order. We also make it clear that the applicant cannot seek seniority in preference to Respondents 3 & 4 but only from the date of joining the post.

19. In this circumstances, the Original Application is allowed as above. No order as to costs.

Dated, the 5th November, 2004.



H.P.DAS
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

VS