

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 511 OF 2008

Friday, this the 11th day of September, 2009.

CORAM:

**HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Zafeer C.N.,
Cheriyannallal House,
Kalpeni Island,
Union Territory of Lakshadweep.

... Applicant

(By Advocate Mr. N. Anil Kumar)

versus

1. Union of India represented
by the Administrator,
UT of Lakshadweep, Kavaratti.

2. The Collector/Development Commissioner,
UT of Lakshadweep, Kavaratti.

... Respondents

(By Advocate Mr. S. Radhakrishnan)

The application having been heard on 11.09.2009, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant was one of the candidates for 03 vacancies to the post of Deputy Surveyor/Draftsman notified by the respondents, vide the Annexure A1 Employment Notice dated 12.02.2008. He has stated in his Annexure A2 Application dated 03.03.2008 that he is a handicapped person. He has also furnished a certificate to that effect alongwith the said Application. The respondents after having conducted the test, prepared the Annexure A5



select list dated 29.07.2008. 03 persons, namely, Shri. Mansoor Ahammed C.G., Shri. Thajudheen R.C. and Abdul Hakeem M.K. were included in the select list against the 03 vacancies in the order of their merit. Another, one Shri. Anuvar Hussain C.E. was wait listed, to appoint him, if any of these selected candidate was not joining. As the applicant did not find his place in the Select List, he made the Annexure A6 representation dated 14.08.2007 to the 1st respondent complaining that the Revenue Department of the Lakshadweep Administration had not earmarked any vacancy of Deputy Surveyor/Draftsman under the handicapped quota. He has also requested to earmark a quota for the physically handicapped for the aforesaid post and to consider him against it. As no reply was received for his aforesaid representation, he has filed this Original Application seeking a direction to the respondents to appoint him to the post of Deputy Surveyor/Draftsman notified as per Annexure A1 notification and to stay appointments to the said post as an interim measure, on the following grounds :-

“(a) Annexure A1 Notification is wrong since it has not reserved any seat for disabled person. As per Section 32 and 33 of Act one of 1996. The appropriate Government shall appoint not less than 3% of person with disability this provision of the act has not been complied in Annexure A1 notification. Hence Annexure A1 notification has to be set aside.

(b) Applicant with 45% disability is entitled to get are post if such a reservation is made. On the basis of Act one of 1996 applicant is entitled to get appointment.

(c) The Administrator has not conduct any test or interview for making the selection. No proper procedure is followed. It is totally illegal.

(d) The entire selection process is against Law and justice and the same has to be set aside.

(e) The applicant is entitled to get appointment.”

2. When the case was initially listed before the Tribunal, in order to

safe guard the interest of the applicant, we have passed an order that any appointment that would be made shall be subject to the outcome of this O.A. However, as the applicant was not satisfied with the aforesaid interim order, he approached the Hon'ble High Court of Kerala vide W.P.C. No.3425 of 2009. The Hon'ble High Court vide its judgment dated 13.03.2009, dismissed the same finding that there was no point in putting the entire selection process and appointments on hold pending adjudication of the claim raised by the applicant. The Hon'ble High Court has also held that, if ultimately, the claim of the applicant was upheld, the Tribunal has the powers to pass consequential orders to redress his claims.

3. Thereafter, this case was listed for final argument on 28.07.2009 but it was adjourned to 20.08.2009 on the request of the proxy counsel for the applicant's counsel. However, on 20.08.2009, neither the applicant nor his counsel or the proxy counsel was present. In the interest of justice, the case was again adjourned for today. Today also, neither applicant nor his counsel is present. Hence we perused the entire pleadings available on record and heard counsel for the respondents.

4. In the reply statement, the respondents have submitted that the procedure of holding tests/interviews for preparing the Select List need not be followed for the posts upto Group 'C' except where there is a provision in the Recruitment Rules to follow such procedure as per the instruction as contained in the order F.No.12/37/2005-Services dated 28.04.2007. In all such cases, selections are made on the basis of Educational qualification/experience. They have also submitted that the post of Deputy Surveyor/Draftsman is a Group 'C' post and there is no provision to hold any



tests/interviews for selection of the candidates for the aforesaid post in the Recruitment Rules.

5. As regards reservation of posts for physically handicapped candidates, they have submitted that in implementation of the "Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation Act, 1995 (Act of 1995)]", they have already identified 117 posts in the various Departments under the Union Territory of Lakshadweep and notified them vide Annexure R1 letter No.1/11/2000-SS(cc) dated 05.03.2000 taking into consideration the duties and responsibilities attached to each such posts but the post of Deputy Surveyor/Draftsman in the Revenue Department is not an identified post for the purpose of reservation for physically handicapped person in terms of the aforesaid Act. They have further submitted that since the Committee constituted for this purpose has not specifically included the post of Deputy Surveyor/Draftsman, this Tribunal cannot insist that the said post shall also be identified as a post to be reserved for physically handicapped candidates. According to them, it is the Committee which is the competent authority to decide whether a particular post should be identified for the purpose of reservation for the physically handicapped under the said Act.

6. We have considered the above respective submissions of the applicant as well as the respondents. We agree that it is for the Committee to identify the posts for the purpose of reservation for physically handicapped persons taking into consideration of the nature of duty to be performed by the incumbent. As the post of Deputy Surveyor/Draftsman has not been identified by the Committee, we do not find any merit in the contention of the



applicant that there should have been reservation for physically handicapped persons for appointment to the post of Deputy Surveyor/Draftsman as notified in the Annexure A1 notification dated 12.02.2008.

7. In the above circumstances, we dismiss this Original Application. There shall not be any costs.

(Dated, the 11th September, 2009.)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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