

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.522/2002.

Wednesday this the 18th day of December 2002.

CORAM:

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

M.K.Chériya Koya, Ferro-Printer,
Lakshadweep Public Works Department,
Circle Office, Kavarathi. Applicant

(By Advocate (Mr. P.V.Mohanan)

Vs.

1. The Administrator,
Union Territory of Lakshadweep,
Kavarathi.
2. The Superintending Engineer,
Lakshadweep Public Works Department,
Kavarathy, Union Territory of
Lakshadweep. Respondents

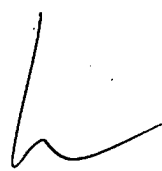
(By Advocate Shri S. Radhakrishnan)

The application having been heard on 12.11.2002
the Tribunal on 18.12.2002 delivered the following:

O R D E R

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

The applicant had the qualification of SSLC and completed I.T.I. Diploma course in Draftsman (Civil) from Industrial Training Institute, Kalamassery vide Annexure-A1 dated 24.11.88. By notification dated 16.1.1996 (Annexure R-1), the first respondent issued the revised Recruitment Rules (RR for short), 1996 for Lakshadweep Public Works Department (Group C Technical Post) as per which the post of "Ferro Printer" is a non-selection post and method of recruitment is direct recruitment. The qualification fixed for direct recruitment is "Matriculation or equivalent and should be able to take prints and develop them and also sensitize paper". The applicant was appointed as Ferro Printer with effect from 17.12.96 against a regular vacancy. He



was successfully completed the Probation as per the Recruitment Rules. He averred in the O.A. that he is the sole "Ferro Printer" working in the department on the sanctioned post. Next higher post to that of Ferro Printer as per the RR is Draftsman Grade III. Total posts of Draughtsman Gr.III are six (6) as per the RR and this post is a selection post. The qualification fixed for the post by direct recruitment is:

(a) Matriculation or equivalent;

(b) At least two years training/study in the line of Building construction, or two years course in Draftsman (Civil) Trade from a recognised I.T.I. or two years course in the trade of Surveyor from a recognised I.T.I."

The method of recruitment as per the RR is 80% by direct recruitment and 20% by promotion, failing both transfer on deputation.

2. In the case of promotion of Draughtsman Gr.III, the post has to be filled up by promotion from the post of Ferro printer in the Lakshadweep Public Works Department, who is having six years regular service in the grade and possessing the qualification prescribed for direct recruitment. In the Lakshadweep Public Works Department Manual, it is stipulated that Ferro Printer with a minimum of 5 years service in the Grade, are eligible for promotion to the grade of Draftsman Grade III against 5% quota subject to passing a departmental test and the qualification set in is "Tracer-Cum-Ferroprinter" with 5 years service in the grade, after appointment thereto on a regular basis. In the Revised Recruitment Rules 1996 which came into being on 16.1.1996, no promotion was made to the post of Draftsman Grade.III from the post of Ferroprinter as per the



quota (20%) set apart for promotees. The present strength of Draftsman Grade III in the department are 5 and all are directly recruited. No promotion to the post of Draftsman Gr.III is made from the category of Ferro Printer from 1996 onwards, thereby the quota rule is violated. Three substantive posts of Draftsman Grade III which arose consequent on promotion of three Draftsmen of Grade III to Grade V should have been filled up by promoting the Ferro Printer by convening Departmental Promotion Committee and without doing so, the post of Draftsman Grade III are notified to be filled up by Direct Recruitment. The applicant submitted an application for selection scheduled to be held on 28.5.2002 to the post of Draftsman Grade III in response to the notification. The applicant was born on 8.5.1962. His candidature was not considered by the respondents on the ground that he attained the age of 40 and the upper age limit for direct recruitment to the post in Group C, according to the respondents is 32 years. This is a clear violation of the O.M.15034/3/87/Estt.D dated 7.10.1987 as amended by O.M.No.15012/1/88-Estt.(D) dated 20.5.1988 which denotes that for direct recruitment in Group D post/services, upper age limit will be relaxable up to the age of 35 years (40 years in the case of SC/ST candidates). The matter of age relaxation is admissible to departmental candidates applying for Group'C' post against outside quota upto the age of 40 years (45 years in the case of SC/ST candidates). In other words, the Direct Recruitment in Group'C' posts/services the departmental candidates are allowed to compete along with candidates from the open market up to the age of 40 years (45 years in the case of SC/ST candidates). Therefore, the applicant is eligible to be considered for



selection but he was not considered by the 2nd respondent and other candidates were called for interview on 28.5.02 and the interview and written test was held without prior intimation. There were irregularities in the selection process. Therefore, on complaint, the selection has not been finalised. No select list is prepared and circulated pending finalisation of enquiry for the alleged irregularities of selection.

3. The applicant made a representation before the first respondent vide A-2 dated 25.5.2002. The applicant is stagnated in the post of Ferro Printer and therefore, the applicant has filed this O.A. seeking the following reliefs:

- "(i) To direct the respondents to fill up the post of Draftsman Grade III by promoting Ferro Printer in the Quota set apart for promotion (20%) in the Recruitment rule.
- (ii) To direct the respondents to consider the claim of the applicant for selection to the post of Draftsman grade.III forthwith.
- (iii) To call for the records leading to selection to the post of Draftsman Grade III and set aside the same in so far as the selection is made to the post set apart for promotees in the recruitment rule and it violates the quota rule and it does not consider the candidature of the applicant for direct recruitment.
- (iv) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interests of justice.

4. The respondents have filed a detailed reply statement contending that admittedly the applicant was possessing a pass in S.S.L.C. and has completed ITI Diploma course in Draftsman Civil from ITI, Kalamassery. But the applicant has not passed the ITI course in Draftsman Civil. The method of recruitment to the post of Draftsman Grade III is 80% by direct recruitment and 20% by



promotion from the post of Ferro-Printer, having 6 years regular service in the grade of Ferro Printer. As per the Recruitment rules, the qualification fixed for the post of Draftsman Grade III by direct recruitment is:

- (i) Matriculation or equivalent;
- (ii) (a) At least two years training/study in the line of building construction or;
(b) Two years course in Draftsman (Civil) trade from a recognized ITI, or
(c) Two years course in the trade of Surveyor from a recognized ITI.

The above educational qualifications are equally applicable in the case of promotion also. A true copy of the Recruitment Rules for Draftsman Grade III is Annexure R-1 and it is submitted that the applicant was to be considered under category (ii)(b) above, since he had studied two years course in the trade of Draftsman (Civil) from the ITI, Kalamassery for which a pass in the course is not necessary. The Annexure A1 document produced by the applicant will not show that he has passed the course and hence, he has not been considered for promotion to the post of Draftsman Gr.III either through direct recruitment quota or through promotion quota. The crucial date for determining the qualifying service of six years has to be taken as 8/2001 and 12/2001. The applicant had joined in the post Ferro-Printer on 17.12.1996. He completes the required regular service of six years for promotion on 16.12.2002 only. Therefore, the consideration either on Direct recruitment or on promotion does not arise. The Lakshadweep Public Works Department Manual mentioned in the O.A. is imaginary and it is contended that he is eligible for age



relaxation up to 45 years as per Government of India, Department of Personnel and Training Office Memorandum dated 20.5.88 mentioned in the O.A. But in this case as the applicant does not possess the required qualification in the Recruitment Rules, he has not been considered. The quota rule in the matter of appointment has never been violated by the respondents.

5. Shri P.V.Mohanan, learned counsel appeared for the applicant and Shri S.Radhakrishnan appeared for the respondents. Learned counsel took us through the factual aspects. Learned counsel for the applicant submitted that the revised Recruitment Rule which was notified on 16.1.1996, is in total derogation to the interests of the applicant because had this RR not been notified, the applicant is the only aspirant for the promotion post as Draftsman Grade III. He has further contended that, even accepting this Annexure R-1 (RR), he is eligible to be considered for the promotion post either on promotional quota or through direct recruitment. Learned counsel for the respondents submits that the applicant has not passed ITI, the qualification prescribed in the RR either for promotion or for direct recruitment and therefore, he was not called for interview.

6. It is the fact that had this RR not been notified the applicant would have been considered for promotion to the said post since he contended that he was the sole Ferro Printer working in the department on a sanctioned post and eligible to be considered for promotion. Since Annexure R-1 has been notified, therefore, the recruitment could be done only through the norms prescribed in Annexure R-1. There is no challenge to quash RR by



the applicant and therefore, we are not venturing to adjudicate on that point. Moreover, the Hon'ble Supreme Court in its decision in V.K.Sood Vs. Secretary, Civil Aviation and others (AIR 1993 SC 2285) declared that the Recruitment Rules which are statutory rules cannot be impeached on the grounds that they prescribe tailer-made qualifications to suit to a particular individual or are discriminatory. Besides, we also came across the decision in J.Ranga Swamy Vs. Government of Andhra Pradesh and others (AIR 1990 SC 535) in which the Hon'ble Supreme Court declared that in the RR prescription of qualification for the post is prerogative and executive and the interference of the Court/Tribunal is to be discouraged. Therefore, we have to evaluate the entire aspects within the ambit of RR (Annexure R-1) and to find out whether the applicant can be fitted to the qualifications and conditions prescribed therein. The Annexure R-1, Recruitment Rules, is reproduced below:

ADMINISTRATION OF THE
UNION TERRITORY OF LAKSHADWEEP
PUBLIC WORKS DEPARTMENT

KAVARATTI-682555
Dated 16.1.1996.

NOTIFICATION

F.No.2/1/151/95-CI:- In exercise of the powers conferred by the Government of India, Ministry of Home Affairs in Notification No.2/7/63-LMA dated 4.2.1963 and in supersession of the rules Relating to recruitment to the Group 'C' Technical posts in the PWD of the Union Territory of Lakshadweep issued in Notifications F.No.E.69/3468/71-B2 dated 20.7.1971, F.No.69/386/71-B2 dated 29.1.1983 and F.No.E.40/81-B1/1606 dated 18.12.1991, except in respect of things done or omitted to be done before such supersession, the Administrator, Union Territory of Lakshadweep hereby makes the following Revised Rules regulating the method of recruitment to the said posts, namely:-

1. Short title and commencement:-



- (i) These rules may be called the Lakshadweep PWD (Group 'C' Technical Posts)(Revised) Recruitment Rules, 1996,
- (ii) They shall come into force on the date of their publication in Lakshadweep Gazette.

2. No. of posts, classification and scale of pay:-

The number of the said posts, its classifications and the scale of pay attached thereto shall be as specified in Cols.2 to 4 of the Schedules annexed to these rules:

3. Method of recruitment, age limit, other qualification, etc:-

The method of recruitment to the said posts, age limit, qualification and other matters connected therewith shall be as specified in Cols.5 to 14 of the said Schedules.

4. Disqualification:- No person,

- (a) Who has entered into or contracted a marriage with a person having a spouse living, or
- (b) Who, having a spouse living, has entered into or contracted a marriage with any person,

shall be eligible for appointment to any of the said posts.

Provided that the Central Government may, if satisfied that such marriage is permissible under the Personal Law applicable to such persons and other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of these rules.

5. Power to relax:- Where the Administrator, Union Territory of Lakshadweep is of the opinion that it is necessary or expedient so to do, he may, by order for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons except Rule 4 of these rules.

6. Savings:- Nothing in these rules shall affect reservations, relaxation of age limit and other concessions required to be provided for the Scheduled Castes, Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central government from time to time in this regard.

Sd/-
(G.S.Chima)
Administrator



SCHEDULE

1. Name of Post Draftsman Grade III/Tracer.
2. No. of posts Draftsman Gr. III:6 and Tracer:1(1996) Subject to variation dependant on work load.
3. Classification General Central Services, Group 'C' Non-Gazette, Non-Ministerial (Technical)
4. Scale of Pay Rs.975-25-1150-EB-30-1540.
5. Whether selection post or non selection post Selection
6. Whether benefit of added years of service admissible under Rule 30 of CCS(Pension) Rules, 1972. Not applicable
7. Age limit for direct recruits Between 18 -25 years. (Note:(1) Relaxable for Government servants, SC/ST Candidates, Ex-servicemen and other special categories of persons in accordance with the instructions or orders issued by the Central Government from time to time.

Note(2): Upper age limit increased from 25 years to 30 years with further relaxation upto 5 years in the case of candidates belonging to ST in the U.T.L. This dispensation shall remain in force for a period of 5 years from 17.8.93 (vide letter No.U.14011/1/93-ANL dated 17.8.1993 of MHA).

Note(3): The crucial date for determining the age limit shall be the last date upto which the Employment Exchange is asked to sponsor the names of candidates.
8. Educational and other qualifications required for direct recruits (1) Matriculation or equivalent (ii) At least two years Training /Study in the line of building construction, OR Two years course in Draftsman (Civil) trade from a recognised ITI, OR Two years course in the trade of Surveyor from a recognised ITI.



9. Whether age and educational qualification prescribed for direct recruits will apply in the case of promotees. Age not applicable. Educational qualification is applicable.
10. Period of Probation, if any. Two years.
11. Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of vacancies to be filled by various methods. 80% by direct recruitment, 20% by promotion failing both transfer on deputation.
12. In case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made. By promotion from the post Ferro Printer in the LPWD who is having six years regular service in the grade and possessing the qualification prescribed in Col.8 or by transfer on deputation from similar posts in CPWD or State PWD/UT Administration.
- Note:- Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other Organisation/Department of the Central Government shall ordinarily not exceed three years.
13. If a Departmental Promotion Committee exists what is its composition. Departmental Promotion Committee for Group 'C' (Technical) Posts:-
S.E. LPWD Chairman
AEE(Ele), UTL Member
Manager, LGP Member
AE(Shipping) Member
RCS, UTL Member
14. Circumstances in which the Union Public Service Commission is to be consulted in making recruitment. Not applicable.

Sd/-
(G.S.CHIMA)
Administrator



7. On a perusal of the said Recruitment Rules in Column 8, the educational and other qualifications for direct recruits has been prescribed as Matriculation or equivalent. Other qualification required for Direct Recruits has been narrated in Clause (II) i.e., at least Two years Training/Study in the line of building construction, OR Two years course in Draftsman (Civil) trade from a recognized ITI, OR Two years course in the trade of Surveyor from a recognized ITI and this educational qualification is absolutely necessary in the case of promotees also. The method of recruitment is 80% by direct recruitment and 20% by promotion, failing both transfer on deputation. The qualification does not mention that the candidate should pass the ITI course. What it denotes is that he should complete two years course in Draftsman (Civil) trade from a recognized ITI. The Annexure-A1 certificate dated 24.11.98 issued by the Principal, Industrial Training Institute, Kalamassery which is produced by the applicant, is not disputed by the respondent. The same is reproduced as under:

Dated: 24.11.1988.


COURSE COMPLETION CERTIFICATE

This is to certify that Sri.M.K.Chериya Koya was a trainee of this institute in the trade of Draughtsman Civil for the session August 1986 to July 1988. He has completed the course and appeared for the Trade Test held in July 1988 but failed.

Sd/-

PRINCIPAL
Industrial Training Institute
Kalamassery, Alwaye.

8. Therefore, it is clear that the applicant has completed the course as enuntiated in Col.8 in the Schedule attached with




Annexure R-1. The contention of the respondents that one of the disqualifications for not considering him for Direct Recruitment quota is that, the applicant has not passed the ITI but only completed the course. On going through Annexure R-1, it is clear that only completion of course is sufficient and passing of the course is not necessary. Therefore, the contention of the applicant's counsel that as far as the denial of an opportunity to the applicant on this account is illegal, has got great force. Moreover, the argument of the learned counsel for the applicant is also convincing that this has been so prescribed because the Islanders are belonged to SC/ST community where education background is very poor and in case passing of course is prescribed, there will not be much candidates for consideration. That is why the relaxed standard has been prescribed by the concerned authorities in the RR.

9. The next limb of argument advanced by the learned counsel for the respondents is that the applicant was overaged for consideration, has no longer stand, because in the written statement in paragraph 9 it has been conceded by the respondents as under:

"The contention of the applicant is true, that he is eligible for age relaxation up to 45 years as per Govt. of India, Department of Personnel and Training Office Memorandum No.15034/3/87-Estt (D) dated 7.10.1987 and 15012/1/88-Estt.(D) dated 20.5.1988."

10. In the circumstances, we are of the view that the denial of an opportunity to the applicant for considering his candidature for the Direct Recruitment quota on the ground of disqualification and that of over-age is faulted and therefore, he is entitled to be considered for the said selection.



11. The averments in the O.A. mainly is on the point that before notification of this RR, 100% promotion was made "by promotion". But vide Annexure R-1 that has been restricted by 80% by Direct Recruitment and 20% by promotion failing both, transfer on deputation. The Col.12 says about recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made and the criteria given is:

"By promotion from the post of Ferro Printer in the LPWD who is having six years regular service in the grade and possessing the qualification prescribed in Col.8 or by transfer on deputation from similar posts in CPWD or State PWD/UT Administration."

12. Therefore, in both saying that for promotees 6 years experience as Ferro Printer and also qualification prescribed in Col.8 is mandatory, whereas age condition is not applicable in Col.9 and educational qualification alone is applicable. In Col.8 & 9 educational qualification is applicable i.e. matriculation or its equivalent is required, whereas in Col. 12 what has been mentioned is the qualification prescribed in Col.8. The entire qualification prescribed in Col.8 is mandatory in Col. 12, which means matriculation or equivalent and also two years training. In other words, Col.9 and Col.12 are not consistent and on reading of Col.12, it is clear that more rigorous qualifications are prescribed in effect for the promotees which are not seen in any recruitment Rules. It may be noted that 6 years experience of a candidate is more competitive than two years completion of course in ITI. Therefore, we cannot support the fact of prescribing the entire qualification in Col.8 for the promotees in Col.12. However, it appears to be an oversight anomaly which the respondents can stand corrected by a



Corrigendum. If the respondents want to consult the Expert Committee who has formulated these rules, they can do so. We do not propose to interfere in the Recruitment Rules since it is a domain of the administration and executive.

13. It is an admitted fact that the applicant has not put 6 years service as per RR to be considered for the promotion post. Considering the fact that if this RR is not coming into effect and the applicant being the sole aspirant on the promotion line and also considering the powers vested with the first respondent to relax the age for such candidate, we direct that the applicant may make a representation within two weeks from the date of receipt of a copy of this order to the first respondent and first respondent himself, and if he has no power, forward the same to the concerned higher authorities who have powers to consider age relaxation to the applicant for consideration under the promotion quota and if so considered, he may be taken to the zone of consideration for selection. It has been submitted before the Court that the selection is not finalised due to some irregularities in the selection process. Therefore, no prejudice to others will be caused in case if the applicant is also considered for selection either by Direct recruitment or by promotion quota.

14. We find that this case is more genuine because the respondents did not consider 20% promotion quota prescribed for promotion. On the other hand, the attempt on the part of the respondents to earmark the entire vacancy towards direct recruitment quota is not justified in view of the provisions in




RR that 80% by direct recruitment and 20% by promotion failing both transfer on deputation.


15. In the result, we dispose of this O.A. with a direction to the respondents to consider the representation of the applicant for age relaxation as per the observations made above and consider his candidature for the post of Draftsman Grade-III within a period of 3 months from the date of receipt of a copy of this order and the decision taken thereon shall be communicated to the applicant immediately thereafter, in any case, within one month from the date of consideration of the representation.

There will be no order as to costs.

Dated the 18th December, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

rv

Applicant's Appendix

A1: True copy of the Course Completion Certificate of the applicant dt.24.11.1988.

A2: True copy of the representation made by the applicant to the first respondent dated 25.5.2002.

Respondents' Appendix

Annexure R1: Notification dated 16.1.1996 issued by the first respondent.