

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.544/2007 & OA No.783/2007

Dated, the 18th day of December, 2008.

CORAM :

**HON'BLE DR. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE DR. K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

1. OA NO.544/2007.

M.P.Subaida
Melilapura House, Kadmat Island,
Union Territory of Lakshadweep. ... Applicant

By Advocate Mr.Arun Raj

V/s

- 1 The Administrator,
Administration of the Union Territory
of Lakshadweep, Kavaratti-682 555
- 2 The Secretary (Gen. Admn. & Services)
Secretariat,
Administration of the Union Territory
of Lakshadweep, Kavaratti-682 555
- 3 Director of Agriculture
Directorate of Agriculture,
Administration of the Union Territory
of Lakshadweep, Kavaratti-682 555.
- 4 Secretary, Agriculture
Administration of the Union Territory
of Lakshadweep, Kavaratti-682 555.
- 5 Azad,
Pattiniyodu House, Agathi Island,
Union Territory of Lakshadweep.
- 6 Shihabuddin
Madhil House, Anthroth Island,
Union Territory of Lakshadweep.
- 7 Nallakoya
Pudhiya Chetta Pokada,
Anthroth Island,
Union Territory of Lakshadweep

8 Mohammed Iqbal,
Kunjupokada Veliyam,
Kalpeni,
Union Territory of Lakshadweep. ... Respondents

By Advocates Mr.S.Radhakrishnan (R 1-4)
Mr.N.Nagaresh (R 5-8)

2. OA No.783/2007

Abdul Azeez K.P(P)
Koodathappada (H),
P.O Agati,
Union Territory of Lakshadweep. ... Applicant

By Advocate Mr.Arun Raj

V/s

- 1 The Administrator,
Administration of the Union Territory
of Lakshadweep
Kavaratti-682 555
- 2 The Secretary (Gen. Admn. & Services)
Secretariat,
Administration of the Union Territory
of Lakshadweep
Kavaratti-682 555
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Pattiniyodu House,
Agathi Island,
Union Territory of Lakshadweep.
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Madhil House,
Anthroth Island,
Union Territory of Lakshadweep.

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7 Nallakoya
Pudhiya Chetta Pokada,
Anthroth Island,
Union Territory of Lakshadweep

8 Mohammed Iqbal,
Kunjupokada Veliyam,
Kalpeni,
Union Territory of Lakshadweep.

9 Mr.Rahmathulla T.P.,
Thettam Pokada (H),
Anthroth Island,
Union Territory of Lakshadweep. ... Respondents

By Advocates Mr.S.Radhakrishnan (R 1-4)
Mr.N.Nagaresh (R 5-8)
Mr.K.B.Gangesh (R-9)

These applications having been heard on 16th December, 2008, the Tribunal on 18.12.08. delivered the following :

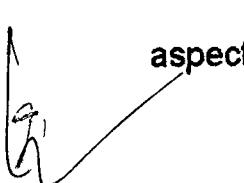
(ORDER)
Hon'ble Dr.K.B.S.Rajan, Judicial Member

As the legal issue involved in the two O.As is one and the same, i.e. alleged illegality in the selection process for the post of Agricultural Fieldmen, this common order is passed.

2. Facts of the case in O.A. No. 644/08: The applicant, a native of Kadmat Island under the Union Territory of Lakshadweep is a handicapped person (40% deaf) and has been working as a casual labourer under the Desiccated Coconut Powder Unit at Kadmat since 1993. She has been an aspirant for the post of Agricultural Fieldman for quite some time but has not been selected for the said post. Vide Annexure A-5, there was a notification dated 02-04-2006 for selection to the said post. The qualification prescribed for the said post is, "S.S.L.C. Or equivalent Qualification with Diploma in Agricultural Science OR Certificate in

Agriculture (Higher) Course of one year duration from an Institute recognized by Board of Technical Education of Central/State Government." Age limit has been prescribed as 18-25 years, relaxable as per Government of India Orders from time to time. The applicant zealously applied for the same, she having fulfilled all the requisite conditions. While for over a year there was no response to the said application of the applicant, there was a notification dated 28th April, 2007, modifying and prescribing the mode of selecting the candidates for the Group C posts, vide Annexure A-6. This provided for 85% of the total marks for the essential qualifications stipulated in the Recruitment Rules and 15% for desirable qualifications/experience/additional or higher qualification. The applicant was not called for any interview and she had come to know that by a communication bearing F. No. 2/12/2006-Agri(1) dated 20-08-2007, the respondents had issued offer letter to four individuals. (These are impleaded as respondents herein). According to the applicant, the selected candidates have been shown extreme favouritism and different criteria, unknown to the recruitment rules or other instructions have been adopted to see that ineligible candidates at the cost of the rights of the eligible candidates have been selected. Hence this OA praying for quashing of the selection order dated 20th August, 2007.

3. **Facts of the case as in OA No. 783/2007:** The applicant herein is a native of Agati Island in the Union Territory of Lakshadweep and on the notification dated 2nd April 2006 vide Annexure A-4, he had applied for the post of Agricultural Fieldman for which the requisite qualifications and age limit (as explained in para 2 above) have been fulfilled by him. Other aspects of the case as narrated in the preceding para and grievance of the



applicant are almost identical with that of the other O.A. and for maintaining brevity, the same is not repeated. He too has thus challenged the selection process and ultimate selection.

4. Respondents have contested the O.A. According to them, the vacancies belonging to 2006 were sought to be filled up by calling for applicants from open market and the Employment exchange and there was adequate response. Initially, it was proposed to conduct a common test but subsequently, by virtue of order date 28th April, 2007 passed by the Administrator, the process of selection was modified and the same was adopted in which the selected candidates had an edge over the applicants and consequently, they have been selected. There is no illegality in the selection.

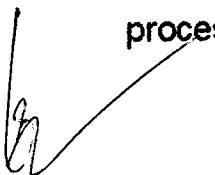
5. Party respondents have also filed their counter, in which they had mentioned that their selection cannot be assailed as the same is within the ambit of the extant rules/instructions.

6. Rejoinder has been filed by the applicant, in which it has been stated that there is no question of any extra mark for higher or additional qualifications as the same has not been contemplated in the provisions of the Act. It has also been contended that two of the selected candidates have been over aged and despite the same they have been in.

7. Counsel for the applicant stated that the notification is specific in respect of two aspects – (a) Age and (b) Educational qualifications. (These have been extracted in para 2 above). As far as age is concerned, the

normal relaxation in age in respect of SC/ST candidates, is 5 years and thus the maximum age for such candidates, should not exceed thirty. At least two of the individuals, Respondent No. 7 and 8 are admittedly over aged. If the respondents have taken into account the general two years relaxation in respect of all candidates, in respect of selection by way of direct recruitment and by conducting of a competitive examination, the same is not applicable in this case since there has been no examination. Again, when the recruitment rules do not contemplate marks for additional/higher qualifications, the respondents have given such marks to the selected candidates(7.5 marks for a computer course of three months duration). Indeed, when the applicant has also got higher qualifications, (plus II), the respondents have not afforded any marks for the same. Thus, hostile discrimination has been shown in this regard. Thus, selection of other candidates is also vitiated.

8. Counsel for the official respondents submitted that when the notification came to be published, at that time, an administrative instructions dated 5th September 2005 {Annexure R1(c) }existed and as the same provided for examination, as such, the general relaxation of two years in respect of selection through common examination was available. It was this concession that was given to two of the selected candidates. It was only later that on 28th April, 2007 that it was provided for selection without a test and as such all those who were found to be eligible (including those who had the benefit of additional two years of age limit as stated above) were considered. In so far as marks allotted to the higher or additional qualifications is concerned, the counsel argued that such a process is generally in vogue in any such selection and there is nothing



illegal about the same.

9. Counsel for the Private respondents almost adopted the same and tried to justify the appointment orders of the party respondents.

10. Original records have also been produced by the counsel for the official respondents.

11. Arguments were heard and documents perused, including the official records. The following questions emerge from the facts of the case:-

(a) Whether the provision of age relaxation meant for selection through direct competitive examination is available to the selection for the post of Agricultural Field-men even when the selection process does not include written examination.

(b) Whether the respondents are within their vested powers to prescribe the mode of selection by awarding 85% of marks for educational qualifications and 15% for additional/higher qualifications including experience.

(c) Whether the respondents are right in awarding 7.5 marks for computer course of three months duration and nil marks for academic qualification of plus two.

12. The post of field-man is to be filled up in accordance with the Recruitment Rules. Earlier, the 1988 recruitment rules provided for educational qualifications which included both essential and preferential. Later in 1998, the preferential qualification has also been included as essential qualification. The rules do not provide for holding any written

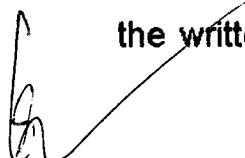
examination, nor does it specifically prohibit holding of examination. As such, selection shall be in accordance with the conditions specified in the Recruitment Rules, i.e. age limit and educational qualification and in so far as the process of selection, the same should be reasonable and should meet the requirement of equality clause. Again, selection process should be on the basis of the criteria laid down in the advertisement. See *Madan Mohan Sharma v. State of Rajasthan*, (2008) 3 SCC 724 wherein the Apex court has held as under:-

"Once the advertisement had been issued on the basis of the circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of the criteria which were laid down and it cannot be on the basis of the criteria which has been made subsequently."

13. In addition to the above, the Apex Court in the case of *N.T. Devin Katti vs Karnataka Public Service Commission* (1990) 3 SCC 157 (as referred to in *Marripati Nagaraja v. Govt. of A.P.*, (2007) 11 SCC 522,) has held:

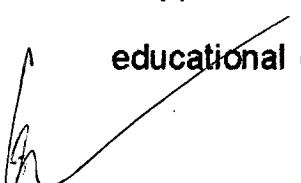
"Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallizes on the date of publication of advertisement, however he has no absolute right in the matter."

14. In the instant case, the advertisement did not stipulate that there would or would not be any examination. As such, the respondents are within their own discretionary powers to prescribe for a written test or otherwise. Records show that in the earlier selection, written test was conducted. (See para 62 of the noting dated 24-05-2007 of the records produced at the time of hearing). It was thus, on the premises of holding the examination that the applications were invited. This is also evident from various noting and documents, which provide for the subject matter of the written test etc. And, since the selection was proposed to be on the

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basis of a written examination, the authorities initially entertained applications from those who had crossed the age of 30 years also. However, those who were born prior to 1975 were all held to be overaged since in their case they would be crossing even that age relaxation of two years available for candidates participating in the written examination. This general relaxation of age limit of two years is admissible in such cases where applications are invited from open market with or without employment exchange registration, but not when selection is made only from out of the candidates sponsored by the Employment exchange. In the instant case, records do show that there were candidates sponsored by employment exchange as also others who had registered their names in the employment exchange and who had applied directly, Thus, entertaining the applications of the private respondents who have crossed the age limit of 30 years was legally valid, provided the selection was made through a competitive examination.

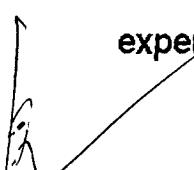
15. As stated earlier, initially the proposal was to hold the examination and steps were taken in this regard. In fact, there has been some delay in the process of selection and when the higher authorities questioned about the delay, the explanation was that time was taken in getting the question papers etc., prepared. Para 53 of noting dated 24-05-2007 refers. However, since by that time, the Administrator had passed an order that there shall be no written examination in respect of recruitment to Group C and D posts, unless the same is stipulated in the Recruitment Rules, vide order dated 28th April, 2007, the idea of holding the examination was dropped and instead, selection was sought to be made on the basis of educational qualifications and experience. Accordingly, prescription of 85



% for educational qualifications and 15% for experience had been prescribed. Para 66 of noting dated 11-06-2007 refers. Once it was decided not to have written examination, then the applications ought to have been scrutinized again to drop those candidates who do not fulfill the age limit of 30 years. The mistake committed by the respondents was that when the decision of not to hold the examination was taken, persons who had crossed the age limit of 30 years have not been filtered but were also considered. This is a serious error as ineligible had been considered for appointment. Such a concession is available only when there is written examination and not otherwise. There is no discretionary power available with the authorities as such a power could be permissible only when it is within the four corners of the Rules. Reference is invited to the decision of the Apex court in the case of *Kendriya Vidyalaya Sangathan v. Sajal Kumar Roy, (2006) 8 SCC 671*, wherein the Apex Court has held as under:-

"The requirements to comply with the rules, it is trite, were required to be complied with fairly and reasonably. They were bound by the rules. The discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof. (emphasis supplied)"

16. In so far as allotment of marks is concerned, the records show that 85% had been prescribed for educational qualifications and 15 for experience in the relevant field. The selection committee appears to have been apprised of the same. However, it is seen from the records that marks were allotted for higher qualifications and there also, in some such marks have been allotted, while in some other the same has not been, as rightly challenged by the applicant. Here again, exists the error committed by the respondents. Further, in respect of experience all those who have experience of two years or more had been granted 7.5 marks, without any

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discrimination. Generally, marks for experience is based on the total years of experience, subject to a maximum prescribed. And, where the requirement of additional or higher qualifications are not prescribed for in the Rules, no additional marks should have been allotted. In this regard, reference is invited to the decision of the Apex Court in *Inder Parkash Gupta v. State of J&K*, (2004) 6 SCC 786, which is as under:-

"While going through the selection process the Commission, however, must scrupulously follow the statutory rules operating in the field. It may be that for certain purposes, for example, for the purpose of shortlisting, it can lay down its own procedure. The Commission, however, must lay down the procedure strictly in consonance with the statutory rules. It cannot take any action which per se would be violative of the statutory rules or makes the same inoperative for all intent and purport. Even for the purpose of shortlisting, the Commission cannot fix any kind of cut-off marks. (See State of Punjab v. Manjit Singh (2003) 11 559.)"

..... qualification is concerned, the same had been laid in the advertisement and the requirement of MD (Medical/General Medical), MCRF, FRCP, Speciality Board of Internal Medicine (USA) or an equivalent qualification in the subject. So far as the teaching experience is concerned, two years' experience as Registrar/Tutor/Demonstrator/Tutor or as a Senior Resident in the discipline of Medicine in a recognised teaching medical institution recognised by the Medical Council of India was specified.

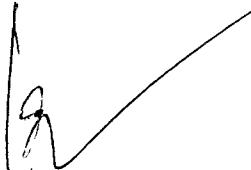
31. So far as the teaching experience is concerned, the Commission awarded marks to those who had even less than two years' experience. One mark was to be awarded for every full year of experience subject to a total of 5 marks. Sports/games, distinction in NCC activities had also been taken into consideration which were not the criteria prescribed under the 1979 Rules. There is nothing to show that any mark was awarded in relation to the previous record of work, if any.

32. In its judgment, the High Court did notice that in awarding marks for minimum qualification prescribed for the post, the Commission did not award any mark at all to some respondents. It, therefore, for all intent and purport had considered the candidature of the candidates only on the basis of 110 marks. If the marks awarded for sports/games and NCC activities are excluded as they are beyond the purview of Rule 8; and as it fixed 100 marks for viva voce test, a clear case of breach of the statutory rules had been made out. While the appellant had been given minimum marks in the viva voce test, the other respondents who did not even fulfil the requisite criterion were awarded higher marks.

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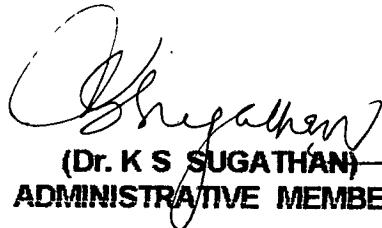
33. The High Court, in our opinion, was correct in holding that Rule 51 providing for 100 marks for viva voce test against 40 for other criteria is contrary to the law laid down by this Court." (Emphasis supplied)

17. Keeping in view the above decisions, if the case of the applicants is analyzed, it would be crystal clear that ineligibles have been considered and selected. While selection of two of the selected candidates who are over aged is vitiated on account of such over age, In respect of the others too, the selection is vitiated, as irrelevant considerations were made in the selection (awarding marks for computer course etc., not provided for in the Rules and again, discrimination shown to the applicant, inasmuch as they not having been awarded any such marks for higher qualifications). Thus, the selection cannot be legally sustainable. Accordingly, the selection of candidates vide order dated 30-08-2007 (as available in the records) is quashed and set aside. The respondents shall take suitable tests for fresh selection. It is open to them to conduct the test as hitherto done, in which event, those who are within the age limit with the additional two years' age relaxation may also be allowed to participate. The selection shall be strictly in accordance with the stipulations in the Recruitment Rules so far as qualifications and age limit are concerned and on the basis a uniform norm in respect of awarding of the marks for written test/viva voce if examination is held (or on the basis of the merit in the essential qualifications and experience as already proposed.) Those of the applicants who would have crossed the age limit now could also be considered if they fulfilled the age limit on the last date for calling for applications. This order may be complied with, within four months from the date of communication of this order.



18. The OAs are allowed. No costs.

(Dated, the 18th December, 2008)



(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

abp/cvr.