

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.563/11

Thursday this the 17th day of November 2011

C O R A M :

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Letheef P.P.,
S/o.Kunhikoya,
Primary School Teacher,
Government Senior Basic School, Kadmat.
Residing at Puthiyapura House,
Kadmat Island, U.T. of Lakshadweep.

...Applicant

(By Advocate Mr.M.P.Krishnan Nair)

V e r s u s

1. Union Territory of Lakshadweep
represented by Administrator, Kavaratti – 682 555.
2. The Secretary, Education,
U.T of Lakshadweep, Kavaratti – 682 555.
3. Director,
Directorate of Education,
U.T of Lakshadweep, Kavaratti – 682 555.
4. Commissioner for Person with Disabilities,
U.T of Lakshadweep, Kavaratti – 682 555. ...Respondents

(By Advocates Mr.S.Radhakrishnan)

This application having been heard on 17th November 2011 this
Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant is a native of Kadmat Island, Lakshadweep and
belongs to Scheduled Tribe community. He is a person with visual
disability of 45% as is evidenced by Annexure A-1, a certificate issued by

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the Medical Superintendent, Indira Gandhi Hospital, Kavaratti. After he passed the SSLC examination he obtained graduation in Humanities from the University of Calicut. Annexure A-2 is the copy of the mark sheet pertaining to his B.A in Humanities. Annexure A-3 is the degree certificate issued. Subsequently he also obtained B.Ed degree in Special Education for Hearing Impaired from University of Calicut. Copy of the degree certificate of B.Ed degree in Special Education for Hearing Impaired is produced as Annexure A-5. The Principal of the college in which the applicant has studied has issued a certificate evidencing that the B.Ed degree in Special Education for Hearing Impaired from the Calicut University is recognized by the Rehabilitation Council of India as per order dated 9.8.2004 and that the college is affiliated to the University of Calicut as per order dated 10.10.2005. The certificate so issued by the Principal is produced as Annexure A-6.

2. The respondents invited application for the post of Primary School Teachers as per notification dated 9.10.2007. Annexure A-7 is the copy of the notification. There were six vacancies including an anticipated vacancy of one. As per Annexure A-35, Sl.No.13 for appointment to the post of Trained Graduate Teachers, six vacancies were notified (one vacancy reserved for handicapped). The qualifications prescribed for the post as per Annexure A-35 are as follows :-

(a) *B.A./B.Sc in the relevant subject and 2 – year Diploma in Elementary Education (by whatever name known)*

OR

B.A/B.Sc in the relevant subject with at least 50% marks and 1 year Bachelor in Education (B.Ed)

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OR

B.A/B.Sc with at least 45% marks and 1 year Bachelor in Education (B.Ed), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 years Bachelor in Elementary Education (B.El.Ed)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 years B.A/B.Sc. Ed or B.A.Ed/B.Sc.Ed in the relevant subject.

OR

B.A/B.Sc in the relevant subject with at least 50% marks and 1 year B.Ed. (Special Education) Graduation with Bachelor of Education with 50% marks in each Degree from a recognized University.

OR

4 years integrated B.Sc Ed or B.A.Ed in the relevant subject with 50% marks from a recognize institute.

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for the purpose.

Note : (1) For the purpose of this notification a Diploma/Degree Course in Teacher Education recognized by the National Council of Teacher Education (NCTE) only shall be considered.

(2) The selection to the post of warden shall be made from the total merit of all the candidates at each instance of recruitment.

3. Subsequently the percentage of marks required was reduced to 45% by Annexure A-37 (a). The applicant is a graduate with 35% marks aggregate. He also possesses a Master's Degree with 50.88% marks

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aggregate. Besides he also possesses B.Ed Degree in Special Education with 59% marks. But the respondents rejected the application of the applicant on the sole ground that he did not have the minimum marks required in the B.A/B.Sc degree since he has secured only 35% marks as against 45% marks required. It is contended by the applicant that since he has secured just above 50% marks in the Post Graduate Degree his application ought not have been rejected since Post Graduate Degree in the same subject is a higher qualification obtained by him and the marks obtained by him being just above 50% he should have been deemed to be fully qualified as per the notification issued. He has a further case that as per clause 22 of the Office Memorandum issued by the Ministry of Personnel, Public Grievances and Pensions dated 29.12.2005 if sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. The relevant clause contained in clause 22 of this Office Memorandum is extracted as hereunder :-

22. **RELAXATION OF STANDARD OF SUITABILITY** : if sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the post/posts in question.

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4. Thus, according to him, he is the only candidate in the reserved category who has applied against the disability quota and as such, even assuming for arguments sake that he should have 45% marks in the Degree also besides 50% marks already obtained by him in the Post Graduate Degree, the authorities ought to have relaxed the general standards in his favour, since there is no other physically handicapped person entitled to be considered for the one post for that category. It is contended that in such circumstances rejection of his application is illegal and void.

5. The respondents would contend that even though Post Graduate Degree in the same subject may be a higher qualification but in this particular case the applicant does not have 45% marks in the Degree examination. If only he had 45% marks in the Degree examination he can be strictly held to be eligible for being considered against the post advertised for.

6. We have heard both the sides. Admittedly, the applicant is a Post Graduate with 50% marks and having B.Ed Degree in Special Education. Even though he had only 35% marks for Graduation, it is doubtful as to whether he would be held as unqualified especially when the Post Graduate Degree has been considered to be a higher qualification and sufficient to be considered against the post where minimum qualification prescribed for the post is a basic degree in Arts or Science. In this connection, the decision rendered by this Tribunal in O.A.560/09 and O.A.875/09 vide its order delivered on 25th January, 2011, held following

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the Apex Court decision in Jyoti K.K. and others Vs. Kerala Public Service Commission and others reported in JT 2002 (Suppl.1) SC 86 that if a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. At any rate, the applicant is the only candidate who has applied against the one post reserved for disabled. As per clause 22 of the Memorandum issued by the Government of India, as extracted above, the executive authority has to consider granting relaxation in favour of a candidate who belongs to Scheduled Caste/Scheduled Tribe and further the only candidate who had applied against the disability quota for appropriate relaxation in the general standard. As a matter of fact, this should be a fit case where such relaxation could be granted especially when the applicant has secured just above 50% marks in the Post Graduate Degree and further has acquired B.Ed Degree in Special Education. It is submitted, however, that an examination/eligibility test is conducted before a person is found suitable as part of the procedural formality for selection.

7. In the factual situation, we direct that the Annexure A-40 and Annexure A-41 representations of the applicant may be considered by the respondents and consider why relaxation should not be granted in favour of the applicant as mentioned above and in granting relaxation they may also consider whether a separate eligibility test will be conducted for the applicant before he is finally selected for the post. (Annexure A-25 to Annexure A-35 are the other testimonials supporting the case of the applicant showing various additional qualifications and

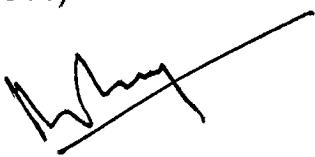
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experience possessed by the applicant). An earlier decision be taken in this regard by the respondents, at any rate, within a period of two months or before filling up the post already directed to be kept vacant, whichever is earlier.

(Dated this the 17th day of November 2011)



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

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