

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 6 / 2009

Wednesday, this the 25th day of November, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR. K NOORJEHAN, ADMINISTRATIVE MEMBER

Abdul Rahim K,
S/o Muhammed Koya,
Agathi Island,
U.T of Lakshadweep.Applicant

(By Advocate Mr PV Mohanan)

v.

The Administrator,
Union Territory of Lakshadweep,
Kavarathy.Respondent

(By Advocate Mr S Radhakrishnan)

This application having been finally heard on 17.11.2009, the Tribunal on 25.11.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Applicant's grievance is against the Annexure A-7 Employment Notice dated 1.12.2008 inviting applications for appointment to the post of Deputy Surveyor/Draftsman in so far as it does not contain any provision for reservation for physically disabled persons in terms of "Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation Act, 1995" (Act 1 of 1996 for short). He is also aggrieved by Annexure A-8 order dated 28.4.2007 containing the modified instructions on recruitment and appointment because, according to him, the fixation of cut off of 85% marks for qualifying examination is without any authority of law and, therefore, non est and nullity.



2. According to the applicant, he is a physically handicapped person with 50% disability as assessed by the Physical Fitness and Assessment of Disability Board (Annexure A-1). He possess the qualification of SSLC, pass in Survey Test conducted by the Government of Kerala, pass in Computer Application Course and pass in Trade Test in Surveyor conducted by the Government of Kerala (Annexures A-2, A-3, A-4 and A-5). He has also got experience as a Surveyor and pass in Pre Degree Examination. He longs to the ST community.

3. According to the recruitment rules for the aforesaid post of Deputy Surveyor/Draftsman, there are altogether only 3 posts of Draftsman and 9 posts of Deputy Surveyors. The appointments are made by way of direct recruitment.

4. In the said Annexure A-7 employment notice the respondents have indicated as prescribed qualification, namely, (i) pass in SSLC or equivalent, (ii) pass in Chain Survey Test conducted by Government of Kerala or any recognised Board/Institution and (iii) certificate course in Computer Application for minimum period of one month. The desirable qualification was pass in Computer Draftsman training course conducted by Government of Kerala or any other recognised Board/Institution.

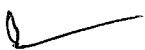
5. The respondents have also issued the Annexure A-8 order dated 28.4.2007 giving modified instructions on recruitment and appointment. According to the said order, the Departments concerned under the Lakshadweep Administration is to conduct the selection of candidates for the Group 'C' posts on the basis of only on educational qualifications/experience. There is no need to conduct any test/interview wherever recruitment rules for the



post in question do not provide to the contrary. The only requirement is that the Department concerned should constitute Recruitment Committee in each and every case of recruitment separately to evolve the criteria for award of marks to the candidates taking into account the requirements as stipulated in the Recruitment Rules. Accordingly, the following guidelines have been prescribed for allocating marks to the candidates:

- a) Not less than 85% of the total marks may be assigned to the Essential Qualification stipulated in the RRs.
- b) Upto 15% of the marks of the total marks may be assigned to desirable qualifications/experience/higher qualifications taking into account the provisions of RRs.

6. The applicant has applied for the aforesaid post of Deputy Surveyor with all testimonials but he was not appointed. He has, therefore, sought a direction to the respondents to set aside the Annexure A-7 employment notice dated 1.12.2008 in so far as it does not reserve any post for the disabled candidates as per the provisions contained in the Act 1 of 1996 and proposes to fill up the post by general candidates category only. He has, therefore, sought a further direction to the respondents to fill up the vacancy of Deputy Surveyor notified by the aforesaid Annexure A-7 employment notice dated 1.12.2008 by appointing physically disabled persons as mandated by the provisions contained in the Act 1 of 1996 and also to consider his application for selection and appointment to the aforesaid post as if the vacancy was reserved for physically disabled candidates. He has also questioned the Annexure A-8 order dated 28.4.2007 and sought a direction to set aside the same in so far as it fixes cut off marks of 85% for essential qualification for selection and appointment.



7. In support of his aforesaid relief, the applicant has taken the ground that the provisions of the Act 1 of 1996 directing the establishment to fill up the requisite percentage by appointing physically disabled persons are declared mandatory by the Apex Court and Hon'ble High Court of Kerala in umpteen number of judgments. He has also submitted that non-reservation of the vacancy in the cadre of Surveyor and filling up of them with general candidates is against the provisions of the aforesaid act and he was the only candidates in the category of physically disabled to contest for the post. Further, he has stated that prescribing the cut off marks of 85% for qualifying examination in the Annexure A-8 circular dated 24.8.2007 has no authority of law and therefore it is honest and nullity in the eyes of law.

8. Respondent in the reply has submitted that the total number of posts available in the cadre of Deputy Surveyor/Draftsman is 12 and out of them, 11 posts have already been filled up. They have also submitted that in pursuance of the Act 1 of 1996, the Lakshadweep Administration has set up a committee for identification of the posts to be reserved for physically handicapped persons. The committee identified various posts in different Departments to be reserved for the physically handicapped persons. However, the post of Deputy Surveyor/Draftsman is not an identified post and therefore no provision for reservation of posts for the disabled persons has been made in the Recruitment Rules and in the employment notice. They have also submitted that there were other physically handicapped candidates also who have applied for the post of Deputy Surveyor/Draftsman in response to the notification and they were competing with general category candidates. Therefore, no special dispensation can be given to the applicant.



9. Learned counsel for the respondent, Shri S Radhakrishnan has also stated that there was no cut off percentage of marks in SSLC Examination prescribed in the notification. He has submitted that the Annexure A-8 order dated 28.4.2007 only states that 85% of the marks obtained by a candidate in the selection is allocated for essential qualification and remaining 15% marks obtained is allocated to the desirable qualifications. He has also invited our attention to the earlier order passed by this Tribunal in O.A.511/2008 dated 11.9.2009 in which the issue of reservation for the disabled candidates for the post of Deputy Survey was considered. The operative part of the said order is as under:

"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."

10. We have heard the learned counsel on both sides. In our considered opinion, the contentions of the learned counsel for the applicant challenging the Annexure A-7 employment notice dated 1.12.2008 and the Annexure A-8 instructions issued by the Lakshadweep Administration to be followed by various departments in allocating marks for selection of candidates for Group'C' posts on the basis of qualification/experience are totally unfounded. Unless a post is identified in terms of the provisions contained in "Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act,



1995" no post can be reserved for the disabled candidates. While identifying the post the Committee takes into consideration the nature of the duties attached to the post and whether they can be performed by the disabled person or not. In view of the fact that the post of Deputy Surveyor/Draftsman is not an identified post for reservation for disabled persons, the applicant cannot question the legitimacy of the Annexure A-7 notice. The applicant's contention regarding mode of marks prescribed by the Annexure A-8 order dated 28.4.2007 is also absolutely misconceived. The respondent is only stating that out of the total marks to be allocated to each candidates who appear in the selection, 85% shall be for the essential qualification stipulated in the Recruitment Rules and 15% shall be allocated for the desirable qualification/experience/higher qualification. There is no arbitrariness or any other illegality in fixing the maximum marks to be allocated to the essential qualification as well as to the desirable qualification respectively as all the candidates are subjected to the same treatment. We, therefore, do not find any merit in this O.A. and it is accordingly dismissed.

There is no order as to costs.



K NOORJEHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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