

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A NO. 594/2005

TUESDAY, THIS THE 13th DAY OF JUNE, 2006.

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR K.B.S. RAJAN, JUDICIAL MEMBER**

M.P. Najmuddin S/o Abdulrahjman
Melapandaram, Agatti Island
U. T of Lakshadweep.

Applicant

By Advocate Mr M.P. Krishnan Nair

Vs.

- 1 Union of India rep. by Administrator
Administration of the UT of Lakshadweep
Secretariat, Kavaratti Island-682 555
- 2 Irshad Begum M.V.
Androth Island,
UT of Lakshadweep
- 3 Cheriya P.P.
Kalpeni,
UT of Lakshadweep.
- 4 Sajeeda N.P. Kavaratti Island
UT of Lakshadweep
- 5 Fathima R.P.
Agatti Island
UT of Lakshadweep
- 6 Fathima K.
Andrott Island
UT of Lakshadweep

Respondents.


By Advocate Mr. Shafik M.A. For R-1

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is a native of Agatti Island of U.T. of Lakshadweep. He is a handicapped person with 40% disability. The

L&D Administration issued circular dated 7.3.2005 inviting applications for selection to the post of LD Clerk and similar grades by direct recruitment from local candidates for 29 posts. Out of 29 posts, 1 post was earmarked for handicapped (Orthopedic) persons, 3 posts for ex-servicemen and 2 posts for Group-D staff. After conducting both typewriting and written tests they have published the select list at Annexure A-2 containing 24 names and placing 3 names in the waiting list. No candidate could be selected under the Ex-Servicemen quota as none of them qualified in the typewriting test. Two names were also recommended for in-service/Group-D quota. The applicant has challenged the merit list on the ground that the 2nd respondent who has been placed at the 4th rank in the merit list is a physically handicapped person, should have been selected under general category and the respondents have illegally transferred her name to physically handicapped category thereby, the chances of the applicant have been adversely affected. It is further alleged that typewriting test should have been conducted for the handicapped persons separately against the one post reserved for them instead of giving the same test for all the 600 applicants selection ought to have been made on the basis of such liberalised test for handicapped persons and they should have been treated on different footing. According to the applicant he has got more than 50% marks both in typewriting and written test and if the above procedure was followed the applicant who is incidentally No. 2 in the list of handicapped persons would have been entitled to get the post



now given to the second respondent who is entitled to get appointment from the merit list of general candidates. The applicant has sought the following reliefs:

(a) To quash Annexure A2 circular to the limited extent of putting the 2nd respondent Irshad Begum under the Physically handicapped quota instead of showing as No.4 in the general category, as also putting 3rd respondent Cheriya as Sl. No. 24 in the General category and resultant giving of Wait list position NO. 1, 2 and 3 for respondents 4, 5 & 6.

(b) Declare that the applicant is entitled to get selection on the basis of his performance in written test and typing trade test and interview from the handicapped quota.

© To call for the entire records leading to the issue of Annexure A1 and A2 and all connected records of the case from the respondent NO. 1

(d) Pass any other appropriate order or orders, directions which are deemed just and necessary in the circumstances of the case.

2 The respondents have contested the Application and submitted that none of the prayers of the applicant is tenable and that the application is liable to be dismissed in limine. The U.T. of Lakshadweep is following the Government of India instructions according to which 3% of the total vacancies of direct recruitment is reserved for physically handicapped persons. Accordingly a notification was issued indicating one post as reserved for Physically handicapped persons. As per the Recruitment Rules for the post of LD Clerks and similar grade posts the educational qualifications prescribed are (i) pass in matriculation (2) a typing speed of 30 words per minute in English/25 words per minutes in Hindi/20 words per

minute in Malayalam. The selection consisted of written test and typewriting test. 14 physically handicapped candidates including the applicant and the second respondent attended the typewriting speed test and the written test. All the 14 candidates were orthopedically handicapped, 4 candidates were having 40% disability including the applicant, the remaining 10 were having 45 % to 60% disability. All the physically handicapped candidates except the second respondent failed in the typewriting test. The Selection Committee therefore recommended the second respondent based on merit in the speed test and the written examination. The applicant and the other physically handicapped candidates who have failed in the typewriting test are not qualified and eligible for selection to the post. Relaxation of standards would arise only if sufficient number of physically handicapped persons were not available on the basis of general standards. The question of exempting physically handicapped persons from typewriting examination arises only if they produce the requisite certificate as being unable to type. Since there was already a handicapped candidate who has passed the typing test as stated above, the question of considering exemption/relaxation in favour of the applicant or any other candidate did not arise. Also following the instructions, persons selected against physically handicapped quota have to be placed in the appropriate place in the roster i.e. if he belongs to S.C. category he will be placed in that quota utilising SC roster point and similarly if he belongs to general category he will be placed in that category utilising a general category roster point.

Therefore placement of the second respondent, a physically handicapped candidate in the general merit list at 4th rank is in accordance with the instructions.

3 The applicant has filed rejoinder reiterating the contentions and grounds raised in the OA stating that the stand of the respondents is not helpful to handicapped persons. Reservation has been made to provide opportunity to physically handicapped persons to get employment. He also denied the statement of the respondents that only the second respondent has passed the type-writing test.

4 Additional reply statement has been filed by the first respondent denying the contention that the second respondent is in the general category and not in the reserved category. They also reiterated that no physically handicapped candidate except the second respondent was successful in the written and typewriting tests.

5 We have heard the learned counsel appearing on both sides. The OA is not filed against any particular order. It challenges the final merit list on the basis of certain general assumptions. The applicant is only one among the 600 persons who applied for the 29 posts which were advertised. He has not produced any records to show that the placement of the second respondent in the merit list has in any way prejudiced him or in other words he would have been selected had the respondents followed the approved procedure. The application should have been dismissed in limine. As it has already been admitted and the pleadings have been completed, it was heard and is being disposed of on merit.

6 The contentions of the applicant are that there should have been separate test and selection process adopted for recruitment for the one post earmarked for physically handicapped, and that the persons who have been qualified under the general quota should not have been shown as selected under the physically handicapped quota. The Government of India have earmarked 3% of direct recruitment for physically handicapped persons and have provided for certain relaxations and conditions for initial recruitment as well as service conditions. Reservations are provided in Group-C and D posts to physically handicapped to the extent of 3% of the direct recruitment vacancies. The posts suitable for being held by the physically handicapped persons have been identified in each category by the Ministries/Departments. The 3% reservation for physically handicapped in Group-C and Group-D categories shall be with reference to the total strength of the cadre whereas in Group-A and B, the percentage is with reference to only posts identified. There are no Government instructions regarding conducting of a separate written examination/trade test for the purpose for filling up the reserved posts in PH category. There is provision for relaxation of standards in the selection, if physically handicapped are not available on the basis of general standards. The computation of 3% reservation for physically handicapped is to be followed as prescribed in comprehensive instructions contained in DOPT OM No. 36035/17/85-Estt.(SCT) dated 1.4.1986 and OM NO. 36015/16/91-Estt.(SCT) dated 20.9.1994. After Indra Sawhney's

case wherein the Hon'ble Supreme Court held that reservation for SC/ST/OBC may be termed as vertical reservation and the reservation for physically handicapped persons as horizontal reservation. Instructions have been issued that the persons selected against physically handicapped quota have to be placed in the appropriate category so that after providing the horizontal reservations, the percentage of reservation would remain the same. The relevant extracts of DOPT OM dated 20.9.1994 and OM dated 4.9.1985 for relaxed standards are extracted hereunder:

(extracts from OM NO. 36015/16/91-Estt.(SCT) dated 20.9.94)

“(b) Revised procedure for filling up the vacancies based on Indra Sawhney case:- the government had under consideration the method of effecting the 3% reservation for physically handicapped persons in the light of the judgment of the Supreme Court in Indra Sawhney case (WP No. 930 of 1990) The Court has held that reservation for C/ST/OBCs may be called vertical reservation and the reservation for physically handicapped persons as horizontal reservation. Horizontal reservations cut across vertical reservation (in what is called inter-locking reservation) and the persons selected against the physically handicapped quota have to be placed in the appropriate category; if the belongs to SC category he will be placed in that quota by making necessary adjustment and similarly he belongs to open competition (OC) category he will be placed in that category by making necessary adjustment. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens should remain the same.

2 In the light of the above said observations of the Supreme Court, it has been decided that the physically handicapped persons selected under the reservation provided for them should be placed in the appropriate category, viz. SC/ST/OBC/General category depending upon the category to which they belong. For example, if in a given year there are 200 Group-C vacancies, the reservation for SCs will be 30, for STs it will be 15, for OBCs it will be 54 and for General category it will be 101. The vacancies reserved for physically handicapped will be calculated as per the instructions on the subject contained in OM dated 1.4.1986. Suppose the vacancies for the physically handicapped in that year come to 6 and of the physically handicapped candidates selected, 1 belongs to the SC category, then the physically handicapped SC candidate will be adjusted against the 30 SC vacancies, the one physically handicapped ST candidate will be adjusted against the 15 ST vacancies and the 2 physically handicapped, OBC and general category candidates against the 54 OBC and 101 General category vacancies respectively. The roster points will be filled up accordingly. The vacancies reserved for the physically handicapped should be indicated

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along with the other vacancies so that the physically handicapped candidates can also apply along with the others."

(copy of OM No. 14016/1/85-Estt.(SCT) dated 4.9.1985)

Subject: Relaxed standard of selection of physically handicapped persons against reserved vacancies.

■According to the instructions in this department's OM NO. 1/1/70-Estt.(SCT) dated 25.7.70 (See order 7 under Section 2) in the case of direct recruitment, whether by examination or otherwise, if sufficient number of Scheduled Castes/Scheduled Tribes candidates are not available on the basis of the general standard to fill all the vacancies reserved for them candidates belonging to these communities are allowed to be selected under the relaxed standard of selection to make up the deficiency in the reserved quota, subject to the fitness of these candidates for appointment to the post/posts in question. The question of extending this concession to physically handicapped persons has also been under consideration of the Government of India and it has been decided that the instructions of the OM dated the 25th July, 1970, aforementioned will apply mutatis mutandis to physically handicapped persons also.■

7 The above instructions are self explanatory. None of the contentions in the OA hold good. The vacancies reserved for physically handicapped have to be indicated along with other vacancies in the circular and they have to apply along with other candidates. They have to be considered first according to the general standards and only if sufficient number of candidates are not available to fill up the reserved vacancies on the basis of general standards, the question of applying relaxed standards would arise. Since in the present selection one candidate viz. The 2nd respondent has fulfilled the general standards having obtained 4th rank she has been selected against the physically handicapped

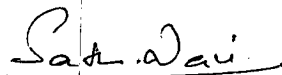
category, and according to the instructions quoted above her placement in the roster shall be shown against the appropriate category of OC/SC/ST etc. The placement would be done by the respondents after the selection in accordance with the appropriate category of the second respondent. The 2nd respondent is a person with 45 to 60% disability whereas the applicant has only the minimum prescription of 40% disability. The applicant failed to qualify in the test. The applicant's prayer has no merit whatsoever.

8 It is to be noticed that Annexure A-2 is only a merit list and not a roster as contended by the applicant. It is a list of 24 selected candidates against the 24 vacancies leaving out the Ex-servicemen and in-service posts arranged in order of merit. Leaving out the three ex-servicemen post out of the 29 posts the merit list consists of 26 names, showing 24 under direct recruitment and 2 as in-service candidates and includes the post reserved for PH category. We do not find any infirmity in the merit list. The contentions of the applicant are not maintainable either on facts or in law. The OA is dismissed. No costs.

Dated 13.6.2006.



K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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