

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 611 of 1991
T. A. No.

DATE OF DECISION 24-4-1992

<u>Mr K Muthukoya</u>	Applicant (s)
<u>M/s PK Aboobacker & Shafik MA</u>	Advocate for the Applicant (s)
Versus	
<u>Administrator, Kavaratti, U.T. of Lakshadweep & 30 others</u>	Respondent (s)
<u>Mr NN Sugunapalan, SCGSC</u>	Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. NV KRISHNAN, ADMINISTRATIVE MEMBER

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *W*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *(W)*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicant who has studied upto SSLC and possessing a license for driving heavy vehicles has been working with the third respondent on a provisional basis as Tractor Driver on daily wages w.e.f. 1.11.1988. Till recently there ^{it was} were no sanctioned post of Tractor Drivers in the Agricultural Department of the Lakshadweep Administration. Therefore, the Department was managing with casual Drivers for driving the tractors. It is in that way that the applicant was taken in as a Casual Driver by order at Annexure-I. While the applicant was working as a Tractor Driver, in response to a notification calling for

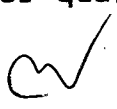
applicants to the post of Drivers by the GAD, he also participated in the selection process but it appears that a panel of 10 persons were prepared in which his name did not find a place. But the applicant did not know that the selection made by the GAD was for Drivers including Driver for the two tractors. But recently, the applicant got information that the post of Tractor Driver in the Agriculture Department would also be filled up from among the panel prepared by the GAD. Apprehending that he would be thrown out of employment, the applicant has filed this application under Section 19 of the Administrative Tribunals Act for a declaration that the proposed termination of his services from the post of Tractor Driver under the 2nd respondent is arbitrary, illegal and against the principles of natural justice and violation of the provisions of Articles 14 and 16 of the Constitution, that he is entitled to be regularised as Driver in the Department of Agriculture under the 2nd respondent on the basis of his long experience and that appointment cannot be made to the post of Drivers from the waiting list of the GAD so long as the applicant fully qualified experienced is not absorbed.

2. The respondents have resisted the claim of the applicant on the grounds that the applicant having failed in the process of selection is not entitled to challenge the result thereof


and also that a panel of 10 candidates have been prepared on the basis of a regular selection conducted in accordance with the provisions of recruitment rules in regard to the post of Drivers at Annexure-R1(a).

3. We have heard the learned counsel on either side and have also carefully gone through the documents produced.

4. That the applicant was engaged as Tractor Driver under the 2nd respondent from 1.11.1988 onwards on daily wages and that he continues to be in service on a casual basis is not in dispute. It is also a common case that though Tractor Drivers were engaged for the last many years, there was no sanctioned post of Tractor Driver under the 2nd respondent, till 2 such posts were created in February 1991 by order of the Administrator No.F.2/6/90-Agri. dated 8.2.1991. In a catena of decisions, the Hon'ble Supreme Court and various Benches of this Tribunal have held that when the services of a person in a particular job have been utilised for a considerable length of time, on a casual basis, when a regular vacancy arises, that person has to be first absorbed in regular service, subject to his being fit. It has also been held that even if he does not fully satisfy the educational or other qualifications prescribed in the recruitment rules treating that experience is a good substitute for qualification, the qualification should




be relaxed in the case of experienced persons. In the light of the above consistent view expressed by the highest court of the land, the respondents should have regularised the services of the applicant to one of the post of Tractor Drivers before resorting to fill that vacancy by any other method. Further, the case of the respondents that the panel at Annexure-R1(b) prepared by the GAD was intended also to fill up the vacancies of Tractor Drivers in the Agriculture Department does not appear to be correct, because the panel at Annexure-R1(b) was prepared in accordance with the recruitment rules at Annexure-R1(a). The name of post in Col.1 of Annexure-R1(a) is shown as Driver(Jeep, Station Wagon, Pick up Van, staff car etc.). It is seen that Tractor is not included there. The learned counsel for the respondents inviting our attention to the relevant provision of the Motor Vehicles Act, submitted that the Tractor is also a light vehicle and "etc." should be understood to have included Tractor also. But we do not agree with this argument. Jeep, Station Wagon, Pick up Van and staff are all vehicles of similar nature intended to carry passengers. But a Tractor is ^{u for} an entirely different purpose and with totally different mechanism in the manner of operation. So it cannot be understood that "etc." in Annexure-R1(a) was intended to include a Tractor also. Since the Annexure-R1(b) select list was prepared after a process of



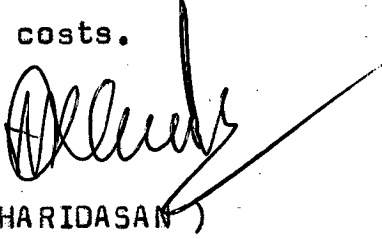
selection in accordance with the Annexure-R1(a), we hold that the 2 posts of Tractor Drivers in the Agriculture Department of Kavaratti are not to be filled from any one of the selected candidates in the Annexure-R1(b) list.

5. The learned counsel for the respondents contended that as the persons whose names are included in the select list at Annexure-R1(b) have not been impleaded parties to this application, it may not be proper to adjudicate the question which may have an adverse consequence as far as those persons are concerned. For 2 reasons, we find it is not necessary to implead those persons in this case. Firstly, Annexure-R1(b) is only a select list. The persons named in the list have not been appointed. Secondly, we are not setting aside the select list at Annexure-R1(b). We have only clarified Annexure-R1(b) is a select list for appointment of Drivers to the vehicles like Jeep, Station Wagon, Pick up Van, Staff Car etc. made in the process of selection in accordance with the recruitment rules at Annexure-R1(a) and not for driving Tractors.

6. Having found that the select list at Annexure-R1(b) does not apply to the 2 posts of Tractor Drivers under the second respondent, we deem it necessary to give a direction to the respondents to regularly absorb the applicant towards one of the posts if he is not otherwise found unfit. In the result, the application is allowed and the respondents



are directed to regularise the applicant in service as a
Tractor Driver under the second respondent, subject to his
being found medically and otherwise fit. There is no order
as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(NV KRISHNAN)
ADMVE. MEMBER

24-4-1992

trs