

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 63 of 2006

Wednesday, this the *11th* day of April, 2007

C O R A M :

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

Abdul Hameed A.P,
S/o. Usman Aradam,
Aynepura House, Kavaratti Island,
U.T. of Lakshadweep

... Applicant.

(By Advocate Mr. Martin G. Thottan)

v e r s u s

1. The Administrator,
Union Territory of Lakshadweep, Kavaratti.
2. The Secretary (Administration),
Union Territory of Lakshadweep, Kavaratti.
3. K.P. Abdul Shukoor, Kuttithaya Pura,
Kavaratti, Union Territory of Lakshadweep.
4. B. Noorul Latheef, Belutheth House,
Androt, Union Territory of Lakshadweep.

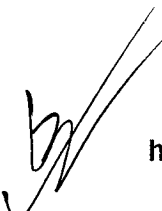
5. K.P. Kassim, Keelapura House, Agatti,
Union Territory of Lakshadweep.

... Respondents.

(By Advocates Mr. Shafik M.A. (R-1 & 2), Mr. TCG Swamy (R-3),
Mr. N. Nagaresh (R-4) and Mr. Pulikool Abubackar (R-5))

O R D E R

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

 For two posts of Staff Car Drivers, on short listing the applications after
holding the written test, 5 candidates (The applicant, R-3 to R 5 and another

candidate) were called for practical test and interview, of whom two (R 3 and R 4) were selected and one (R-5) placed in the waiting list by the Selection committee. As there were some representations alleging that R 3 did not have the requisite qualifications, on scrutiny, the same having been found true, R-3 was kept out of selection and the wait-listed candidate R-5 has been selected. The applicant herein has challenged selection of R-4 and also contended that he ought to have been selected by virtue of the fact that he had qualified in the Practical Test and he possesses the requisite qualifications. According to the official respondents, the candidature of applicant No. 1 right from the beginning is on provisional basis as there had been a doubt about his eligibility in respect of age limit and he had not been found suitable by the selection committee. As such, the applicant has no locus to challenge the selection. What is to be adjudicated is whether applicant is eligible for consideration for appointment to the post of Staff Car Driver and if not, whether he could challenge the selection.

2. Since the latter part of the above question is purely one of legal, without going into the facts of the case, the same could be answered.

3. In the case of ***K. Shekar v. V. Indiramima, (2002) 3 SCC 586***, the Respondent No. 1 therein was unqualified to apply for the post in question, and when he challenged the selection, the Apex Court has held as under:-

"It may be that Respondent 1 could not directly challenge the appellant's appointment as Lecturer at the Centre in 1986 either because she herself was merely not an applicant but was unqualified to be so appointed or on the ground of delay."



4. In the case of **Mohd. Shafi Pandow v. State of J&K, (2001) 10 SCC 447** wherein too the appellant did not possess the minimum qualification challenge by him of the appointment, was not entertained. The Apex Court in that case had held as under: -

"Further, the appellant did not possess the minimum qualification required for direct recruitment, namely, TDC (Final) Medical, and therefore, he was ineligible for being considered as a direct recruit. In that view of the matter, he had no locus standi to assail the appointment made in favour of others who pursuant to the advertisement, did make application and did possess the requisite qualification, and were ultimately appointed."

5. Again, in **Union of India v. K.B. Rajoria, (2000) 3 SCC 562**, where the writ petitioner before the High Court did not have the locus standi, the Apex Court has held:-

"8 . Second, the High Court erred in not dismissing the writ petition on the ground of the obvious lack of locus standi in Rajoria who had never been granted notional promotion because DPC was not in fact held for reasons which the High Court felt were unavoidable."

6. Thus, in case the applicant is found to be ineligible to apply for the post of Staff Car Driver, in that event, straightway, the OA can be dismissed.

7. A little bit details as to relevant notification, qualifications, etc., at this juncture would be appropriate. The details hereinafter contained are as available in the original records which had been produced at the time of hearing.



Annexure A-1 is the relevant notification calling for applications for the post of Staff Car Drivers. The same reads as under:-

**"F.No. 12/52/2003-Services (2)
Administration of the
Union Territory of Lakshadweep
(Secretariat)
Kavaratti, dated : 17-03-2005**

Public Notice

Two temporary post of Staff Car Driver in the scale of pay of Rs.3050-4590 is going to be filled up under direct recruitment quota from local candidates in the age group of 18 and 25 years (relaxable five years for Scheduled Tribe candidates plus two years under Government of India, Department of Personnel and Training Notification No. 15012/6/98-Estt (D) dated 21.12.1998). The crucial date for determining the age will be the last date of receipt of application i.e. on 15.04.2005. The candidate should possess (i) valid Light Vehicle driving licence (ii) Two years experience in driving light motor vehicles (iii) A pass certificate in Vth standard.

The eligible and willing candidates may apply with attested copies of their testimonials to prove their educational qualifications/caste/age etc. so as to reach in this Secretariat on or before **15.04.2005** in the prescribed format which can be had from the SDO/ASDO/DC in the islands.

**Sd/-
(K.C. Surender)
Secretary (Administration)"**

8. The applicant whose date of birth is 08-03-1969 and who had functioned on daily wage basis as driver from 1997 to 2005 in Indira Gandhi Hospital,

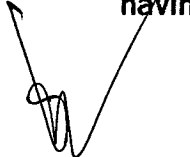


Kavaratti, was one of the aspirants and as he was, as per the notification, over-aged, his candidature was approved, subject to "relaxation of his age to the extent of period of service on daily wages".

9. As per the Proceedings of the Selection Committee, the merit list was as under:-

Abdul Shukoor K.P. (Resp No. 3)
Noorul Latheef B (Respondent No. 4)
Wait List:
Kasim K.P. (Respondent No. 5)

10. Two representations were received - (a) from K.P. Kasim, Respondent No. 5 and (b) Abdul Hameed (applicant) alleging that Shri K.P. Abdul Shukoor does not have two years' experience certificate, which is one of the qualifications stipulated in the Recruitment Rules. Moreover, he was issued a Driving Licence only in 2004. In addition to making representation, the said Respondent No. 3 also filed this OA challenging order dated 10-01-2006 (Annexure A-2) appointing Respondent No. 3 and 4. In so far as the OA was concerned, this Tribunal had ordered that selection if any of the Staff Car Drivers shall be subject to the outcome of the O.A. Order dated 02-02-2006 is relevant. As regards representation, the allegation, on verification of records having been found correct, the selection was to be reconsidered and in order to ascertain the details, the five individuals were called for interview were summoned to the office with original licence. On processing, the selection Committee having found that Shri Abdul Shukoor (Respondent No. 3) not having the requisite qualification, his name was dropped and the second in the



original select list (i.e. Respondent No. 4) and the one in the waiting list (i.e. Respondent No. 5) were recommended for appointment by the Selection Board. The condition stipulated by the Tribunal in the meantime, as stated above, had been kept in view and Respondent No. 4 and 5 have been appointed. Respondent No. 4 and 5 came to be appointed.

11. Counsel for the applicant submitted that Respondent No. 4 who has been appointed as Staff Car Driver did not possess the requisite experience of two years in driving LMV, as the licence in his possession reflects that the individual had the licence for driving LMV only w.e.f. 03-01-2004. Thus, his appointment is illegal. He had relied upon the rules under the Motor Vehicles Act in this regard. According to him, for running transport vehicles, certain years of experience is required and what the said Respondent No. 4 possessed at the time of recruitment was only licence for auto and not for LMV for a period of more than two years.

12. Counsel for Respondent No. 3 submitted that apart from the above flaw, the very calling for the selection of applicant is illegal as, according to the official respondents, the said applicant is over aged and his participation has been only provisional. Thus, there being less number of candidates for selection for two posts of Staff Car Drivers, the impugned appointment order should be quashed and set aside and fresh process should be commenced.

13. Counsel for respondent No. 4 submitted that his appointment is fully legal

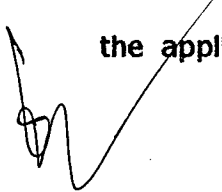


and in fact the applicant has no locus to question the appointment as he cannot be selected by virtue of over age.

14. Counsel for respondent No. 5 submitted that the entire matter had been considered by the selection committee for the second time, when they had ascertained about the non fulfillment of the conditions of two years by Respondent No. 3 and their selection for the second time cannot be found fault with.

15. Official respondents contended that the selection has been legal; applicant did not qualify in the selection as he was nowhere in the select list or in the waiting list. In addition, his participation was only provisional; the requisite age relaxation for drivers engaged on casual basis to the extent of their casual service had not been afforded by the competent authority and as such, the applicant in any event could not be selected.

16. Arguments were heard and documents perused. If the applicant cannot be considered for appointment on account of over age, then he cannot question the selection or appointment of respondent No. 4. From the records it is found that relaxation of age has not been granted by the DOPT and as such, there is no question of applicant becoming entitled to be considered for the appointment as Staff Car Driver. Again, as has been ascertained from the records, the applicant could not make his merit even as a wait-listed candidate. As such, the applicant cannot question the selection as he could not have under any

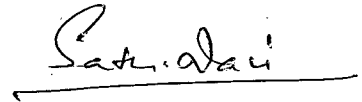


circumstances be selected. Consequently, the application falls and is therefore, dismissed. No costs.

(Dated, the 11th April, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

CVR.