

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 152 of 2008

Thursday, this the 5th day of November, 2009

CORAM:

Hon'ble Mr. George Paracken, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

P.K. Ashraf, S/o. Late Sri. C. Usman,
 aged 24 years, Staff Nurse (Temporary),
 Community Health Centre, Amini, residing
 permanently at Palamkakada House,
 Kavarathi.

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Applicant

(By Advocate – Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by the Secretary to Government
Department of Health and Family Welfare, New Delhi.
2. Administrator, Union Territory of Lakshadweep, Kavarathi.
3. Director of Medical and Health Services, Union Territory of
Lakshadweep, Kavarathi.
4. Abida A.G., Aouge House, Pallassery Village,
Minicoy Island.
5. Naseer L., Langhiyoda House, Agatti Island.
6. Fathima T., Thenakkal House, Agatti Island.
7. Mohammed Azharudeen C.P., Staff Nurse,
Indira Gandhi Hospital, Kavarathi.
8. Dr. K.P. Hamzahoya, Director of Medical
and Health Services, UT of Lakshadweep,
Kavarathi.

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Respondents

**[By Advocate – Mr. Sunil Jacob Jose, SCGSC (R1),
 Mr. S. Radhakrishnan (R2-3) and
 Mr. P.K. Ibrahim (R4-7)]**



The application having been heard on 05.11.2009, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. George Paracken, Judicial Member -

The applicant is aggrieved by the impugned proceedings Annexure A-7 dated 29.5.2007 i.e. the selection of respondents Nos. 4-8. The aforesaid proceedings reads as under:-

"Proceedings of the Selection Board dated 29.5.2007 constituted for conducting for selection of candidates to the post of Staff Nurse notified by the department of Medical & Health Services, U.T. of Lakshadweep.


Present:

- | | | | |
|----|--|---|----------|
| 1. | Dr. K.G. Ali,
Dental Surgeon,
Indira Gandhi Hospital, Kavaratti | : | Chairman |
| 2. | Dr. J.K. Kohli,
Anesthetist,
Indira Gandhi Hospital, Kavaratti | : | Member |
| 3. | Dr. Amit Sen Gupta,
Gynecologist
Indira Gandhi Hospital, Kavaratti | : | Member |
| 4. | Dr. M.P. Basheer,
Chief Medical Officer,
Indira Gandhi Hospital, Kavaratti | : | Member |

The selection proceedings consisted of selection. The marks for the selection process as awarded as under:

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

On the basis of the marks obtained by the candidates, the



selection board recommended four candidates in the order of merit to the post of Staff Nurse.

S. No.	Name of the candidates	Native Island
1	ABIDA A.G.	MINICOY
2	NASEER L	KAVARATTI/AGGATTI
3	FATHIMA T	AGATTI
4	MD AZHARUDHEEN C.P.	KALPENI
5	ASHRAF P.K.	KAVARATTI
6	BEEBI SUHURA B.I.	KILTAN
7	MD AZHARUDHEEN M	ANDROTT
8	FAYAZ KAHAN H.K.	AMINI
9	NOORJAHAN B H	AMINI

Sd/-
Dr. J.K. Kohli
Anesthetist
IGH, Kavaratti
(Member)

Sd/-
Dr. Amit Sen Gupta
Gynecologist
IGH, Kavaratti
(Member)

Sd/-
Dr. M.P. Basheer
Chief Medical Officer
IGH, Kavaratti
(Member)

Sd/-
Dr. K.G. Ali,
Dental Surgeon,
Indira Gandhi Hospital, Kavaratti
(Chairman)"

2. The applicant was earlier working as a Staff Nurse on contract basis. When an adhoc vacancy of Staff Nurse has arisen in September, 2007, he was offered that post and since then he has been working in the said capacity. Later, the permanent incumbent of that post was appointed on another post and the said adhoc vacancy has become a regular one. The applicant submitted that while he was eligible in all respect, ineligible persons have been appointed to that post. His further contention was that the procedure for direct recruitment before the Annexure A-6 order dated 28.4.2007 was by conducting written test followed by viva-voce. Since the Annexure A-6 order dated 28.4.2007 has been issued subsequent to the

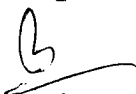


Annexure A-5 employment notice dated 12.2.2007, he has argued that the respondents ought to have conducted a written test followed by viva-voce before the panel was prepared. He has, therefore, submitted that the selection already made was illegal and it is to be quashed. However, as an alternative measure, he submitted that if he is appointed on regular basis as in the case of private respondents, he may not insist for quashing of the said selection procedure. He has also submitted that since the four vacancies against which the notification was issued and the adhoc vacancy against which he was appointed and working have arisen in the same year, the respondents would have no problem in appointing him from the Annexure A-7 panel in which his position is at serial No. 5.

3. Last time when the matter came up for hearing, this Tribunal inquired from the learned counsel of the respondents whether the respondents have any solution to offer so that the grievance of the applicant is met without disturbing the appointment already made. In response, the respondent No. 3 filed an additional affidavit which reads as under:-

"I Dr. K.P. Hamzakoya, aged 52 years, S/o. Mr. Attakoya, Director, Medical & Health Service, UTL, Kavaratti do here by solemnly affirm and state as follows:-

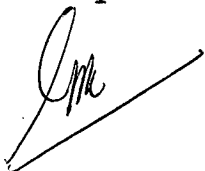
1. This Affidavit is filed as per the directions issued by this Honourable Tribunal on 27.8.2009 directing this respondent to file an Affidavit for the purpose of settling the issues raised in the above O.A., without causing any inconvenience or difficulties either for the applicant or for the selected candidates. Hence just for the purpose of giving coitus to the issue raised in the OA it is clarified that as a special dispensation, the Department of Medical & Health Services has decided to regularise Mr. P.K. Ashraf who was appointed on adhoc basis as Staff Nurse and was continuing in the post for the last two years by taking into account the fact that Mr. P.K. Ashraf is having the required qualification and he had also under went the selection for the



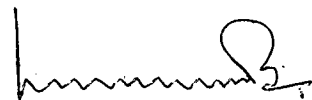
post and his service in the Department was hitherto satisfactory. With the sole intention of settling the dispute raised in the OA, it is decided to regularise the service of Mr. P.K. Ashraf in the post of Staff Nurse, he was holding. Formal orders in this regard will be issued on receipt of further direction from the Tribunal.

All the facts stated above are true and correct to the best of my knowledge information and belief."

4. In view of the aforesaid affidavit filed by the respondent No. 3, we close this OA with a direction to the respondents to issue the necessary orders within a period of one month. There shall be no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(GEORGE PARACKEN)
JUDICIAL MEMBER

"SA"