

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 155 of 2008

Wednesday, this the 3rd day of June, 2009

CORAM:

Hon'ble Mr. George Parackal, Judicial Member
Hon'ble Ms. K. Noorjehan, Administrative Member

M.K. Abdul Raheem, aged 35 years,
 S/o. Hamza Koya, Malmikakkada House,
 Kalpeni, Union Territory of Lakshadweep.

..... **Applicant**

(By Advocate – Mrs. Swayamprabha)

V e r s u s

1. The Administrator, Union Territory of Lakshadweep, Kavarathy.
2. Director of Education, Department of Education, Union Territory of Lakshadweep, Kavarathy.
3. Union of India, represented by The Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
4. Smt. Bi M.C., Mellachedam House, Kalpeni.

..... **Respondents**

(By Advocate – Mr. S. Radhakrishnan-R1&2, Mr. TPM Ibrahim Khan, SCGSC-R-3 & Mr. TCG Swamy-R-4)

The application having been heard on 3.6.2009, the Tribunal on the same day delivered the following:

ORDER

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

The applicant has earlier approached this Tribunal vide OA 741 of 2004 seeking a direction to the respondents to appoint him to the post of Primary School Teacher, pursuant to the select list prepared by the respondents as he was one of the wait listed candidates for the 22 vacancies notified on 20.3.2003. The aforesaid OA was dismissed by the order of this Tribunal dated 17.11.2005 noting the fact that the applicant was basing his

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claim on the assumption that the 22 posts noticed were in terms of the single notification dated 2.4.2003, whereas the actual position was that the respondents have issued two separate notifications indicating the total vacancies of 22 and 17 respectively. Out of those vacancies, 50% were earmarked for the candidates with relaxed educational qualifications. The respondents have also clarified the position that the names of 22 candidates appeared in the aforesaid notification are the candidates who have been selected from the two notifications for 22 and 17 vacancies respectively. The applicant has carried the aforesaid order of this Tribunal before the Hon'ble High Court of Kerala in WP No. 6789 of 2006. During the course of arguments the applicant raised the new contention before the Hon'ble High Court that some of the candidates included in the select list were ineligible to be considered. The allegation against the 4th respondent, Mrs. Bi M.C was that she was over aged and, therefore, she was wrongly included in the rank list. The Hon'ble High Court vide its judgment dated 15.1.2008 (Annexure A-1) directed the applicant to raise the said plea before this Tribunal as the High Court has no original jurisdiction to entertain the dispute regarding service matters of Central Government employees. Accordingly, the applicant has filed the present OA before us. The prayer of the applicant is to declare that he is eligible and entitled to be appointed as Primary School Teacher and to direct the respondents to quash the Annexure A-3 order by which the 4th respondent, namely, Mrs. Bi M.C. has been appointed to that post.

2. The contention of the applicant is that the 4th respondent is over aged at the crucial date as per the Annexure A-4 recruitment rules which reads as under:

"6. Age limit for direct recruitment :

18-30 years.

Note : Relaxable for Government Servants/SC/ST candidates. Ex-servicemen and other special categories of persons in accordance with the instructions/orders issued by the Government of India from time to time. The crucial date for determining

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the age limit shall be the last date on which the Employment Exchange is asked to sponsor candidates."

He has also submitted that he was the only eligible person available to be appointed to the aforesaid post.

3. The learned counsel for the respondents Shri S. Radhakrishnan has submitted that in accordance with the Central Civil Services and Civil Posts (Upper Age Limit for Direct Recruitment) Rules, 1998 issued vide notification No. 15012/6/98 Estt (D), dated 21.12.1998, by the Government of India, Ministry of Personnel and Training, the upper age limit for recruitment by the method of direct open competitive examination to the Civil Services and Civil Posts specified in the Service/Recruitment rules on the date of commencement of those Rules, i.e. 1.4.1999 has been increased by two years. The Government of India, Ministry of Home Affairs vide their letter No. U-14011/4/98 - ANL, dated 13.7.2001 has clarified that those rules should equally be applicable to all recruitments through direct recruitment competitive examination to Group C & D posts under the Union Territory Administration of Lakshadweep irrespective of the fact that the direct recruitment examination has been limited only to the natives of the Union Territory. According to the aforesaid notification, the Government of India, Department of Personnel & Training vide notification dated 21.12.1998 and Ministry of Home Affairs letter dated 13.7.2001 existing upper age limit will go from 30 to 32 and that of the SC & ST will go from 30 to 37. Therefore, he has submitted that the selection of the 4th respondent who was 36 years of old was within the prescribed age limit and her selection cannot be questioned. He has relied upon the judgment of this Tribunal in OA 544 of 2007 and 783 of 2007 decided on 18.12.2008 in which it has been held as under:

"14. In the instant case, the advertisement did not stipulate that there would or would not be any examination. As such, the respondents are within their own discretionary powers to prescribe for a written test or otherwise. Records show that in the earlier selection, written test was conducted. (See para 62 of the noting dated 24-05-2007 of the records produced at the time of hearing). It was thus, on the

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premises of holding the examination that the applications were invited. This is also evident from various noting and documents, which provide for the subject matter of the written test etc. And, since the selection was proposed to be on the basis of a written examination, the authorities initially entertained applications from those who had crossed the age of 30 years also. However, those who were born prior to 1975 were all held to be overaged since in their case they would be crossing even that age relaxation of two years available for candidates participating in the written examination. This general relaxation of age limit of two years is admissible in such cases where applications are invited from open market with or without employment exchange registration, but not when selection is made only from out of the candidates sponsored by the Employment exchange. In the instant case, records do show that there were candidates sponsored by employment exchange as also others who had registered their names in the employment exchange and who had applied directly. Thus, entertaining the applications of the private respondents who have crossed the age limit of 30 years was legally valid, provided the selection was made through a competitive examination."

4. The aforesaid order of this Tribunal was challenged before the Hon'ble High Court in WP No. 38104 of 2008 and vide judgment dated 26.2.2009 it was upheld as under:

"16. Going by the above quoted portion of Ext. P6 order, it is manifestly evident that the said order has to apply for future selections and not to the selection notified as per Ext. P2 on 2.4.2006. In this context, we notice the contention of the first respondent herein raised in her writ petition that Ext. P1 will apply only to selection by open competition. Since candidates registered with the Employment Exchange were only eligible, she submitted that it is not to be treated as an open competition selection. We have already extracted above, the relevant portion of Ext. P14, produced in WPC 5012 of 2009, based on which the above submission is made. But, a reading of the paragraph of the said circular quoted earlier, would show that the claim of the first respondent/applicant is untenable. Even if applications are invited from persons registered with the Employment Exchange, still it is a selection by open competition and therefore, the mandate of Ext. P1 has to be followed. Since the selection was admittedly made not following Ext. P1, it is liable to be set aside. Further, as the selection has to be made after a written test, the candidates are entitled to get additional age relaxation for two years."

5. In view of the above facts of the case and the judgment of this Tribunal as well as the judgment of the Hon'ble High Court of Kerala, we have no doubt in our mind that by the Annexure R-1 notification, the upper

age limit of the candidates appearing for direct recruitment through open competitive examination has been increased to 32 years for general candidates and 37 years for SC/ST candidates. Since the 4th respondent was within the aforesaid prescribed age limit, her selection cannot be held as invalid.

6. Accordingly, we find that this OA is devoid of merit and it is accordingly dismissed. There shall be no order as to costs.


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(GEORGE PARACKEN)
JUDICIAL MEMBER

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