

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 163 and 214 of 2007

Wednesday, this the 17th day of September, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

O.A.No.163/2007

1. K.S.Seethikoya,
Fork Lift Operator,
Keelasurambi House,
Kadamath, U.T. of Lakshadweep.
2. P.Pookunhi,
Fork Lift Operator,
Palliyakkal House,
Amini, U.T. of Lakshadweep.
3. K.K.Abdul Wahab,
Fork Lift Operator,
Kunduvakada House,
Kalpeni, U.T. of Lakshadweep.
4. K.Abdul Kader Koya,
Fork Lift Lift Operator,
Kalkandiyoda House,
Agathi, U.T. of Lakshadweep.
5. P.V.Shajahan,
Fork Lift Operator,
Puthiya Veedu House,
Kadamath, U.T. of Lakshadweep.Applicants

(By Advocate Mr T.M.Kochunni)

v.

1. Union of India represented by
the Secretary,
Ministry of Shipping, Road Transport
& Highways (Department of Shipping),
New Delhi.
2. The Chief Engineer & Administrator,
Andaman Lakshadweep Harbour Works,
Port Blair, Andaman.



3. The Deputy Chief Engineer,
Lakshadweep Harbour Works,
Kavarathi.
4. The Executive Engineer,
Lakshadweep Harbour Works,
Kavarathi.
5. The Executive Engineer,
L.H.W., Amini.Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

O.A.No.214/2007

A.C.Ummer,
Fork Lift & Power Tiller Operator,
Lakshadweep Harbour Works,
Kiltan. - Applicant

(By Advocate Mr T.M.Kochunni)

v.

1. Union of India represented by
the Secretary,
Ministry of Shipping, Road Transport
& Highways (Department of Shipping),
New Delhi.
2. The Chief Engineer & Administrator,
Andaman Lakshadweep Harbour Works,
Port Blair, Andaman.
3. The Deputy Chief Engineer,
Lakshadweep Harbour Works,
Kavarathi.
4. The Executive Engineer,
Lakshadweep Harbour Works,
Kavarathi.
5. The Executive Engineer,
Lakshadweep Harbour Works,
Amini.Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

This application having been finally heard on 17.9.2008, the Tribunal on the same day delivered the following:



ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Both these O.As are identical in nature and therefore, they are heard together and disposed of by this common order.

2. For the sake of convenience, the facts as sated in O.A.163/2007 have been considered and they are as under: Applicants were candidates for the recruitment for the post of Fork Lift Operators under the work charged establishment in Lakshadweep Harbour Works. On sponsoring their names by the Employment Exchange, the Additional Chief Engineer, Lakshadweep Harbour Works, vide Memorandum dated 25.7.1994 directed them to attend the interview/test on 20.8.1994 in the office of the 4th respondent to consider them for appointment to the aforesaid post. They have attended the interview on the said date and stated to have been selected but they were not given any offer of appointment. On the contrary, the respondents issued various "work orders" to the applicants for maintenance and operation of Fork Lifts, Tractors and other light motor vehicles. The Annexure A-2 dated 15.3.1995 issued to the applicant No.1 and filed along with this O.A is one such Work Orders. Similar Work Orders have been issued to other applicants also as evident from the Annexure A-3 letter dated 19.8.1995 and the Annexure A-4 letter dated 18/19.3.1996 extending the validity of all the work orders already issued to them. On completion of the work, they were issued fresh work orders also as evident from Annexure A-6 Note dated 4.4.2000 and the Annexure A-7 work order dated 18.9.2000. When the respondents stopped giving them any fresh work orders, they made the Annexure A-8 series of identical but separate representations dated 22.1.2007 to the respondents stating that they were already interviewed for the post of Fork Lift Operator on 20.8.1994 and they have been selected for



the said post but contrary to the terms and conditions contained in the Annexure A-1 notice dated 4.2.2003, the Executive Engineer, Lakshadweep Harbour Works, without appointing them as Fork Lift Operators, awarded them the work orders from time to time. They have also submitted that in various work charged establishments of the Lakshadweep Harbour Department, posts are still vacant and requested the respondents to allow them to continue as Fork Lift Operators or appoint them as Drivers in the existing vacancies, if necessary, by amending the Recruitment Rules. They have also submitted that the 3rd respondent has issued vacancy notice dated 2.2.2007 (Annexure A-9) to fill up vacant posts of Driver Gr.II under the work charged Establishment of Deputy Chief Engineer, Kavarathi.

4. In the reply statement, the respondents have submitted that the Lakshadweep Harbour Works is functioning as a Wing of the Andaman, Lakshadweep Harbour Works, a Department under the Ministry of Shipping, Road Transport & Highways. Based on the Annexure R-1 proposal dated 9.2.1990 made by the Port Department of Lakshadweep Administration, the Chief Engineer & Administrator, Lakshadweep Harbour Works vide letter No.ALHW/TECH/6(42)/90 dated 6.12.1991 accorded technical sanction for procurement of 12 Forklift Trucks for easy handling of heavy cargo from jetty to the sites in various islands of Lashadweep. For operation of those machines, the respondent No.2 submitted a proposal for creation of posts of Forklift Operators to the Chief Engineer and Administrator vide Annexure R-2 letter dated 13.10.1992. In anticipation of approval of the competent authority on the aforesaid proposal, the Additional Chief Engineer, Lakshadweep Harbour Works, Calicut initiated action to select and appoint suitable candidates for operation of those machines and issued the Annexure A-1 memorandum dated 25.7.1994 to the candidates including the applicants. But, unfortunately, the proposal for



creation of the posts was not accepted by the competent authority and, therefore, no further action to appoint Forklift Operators was taken. In those circumstances, respondent-department decided to carry out the work of operation of the Forklift Trucks on contract basis by issuing necessary work orders on nomination basis as per CPWD Form 11 to the qualified persons belong to Lakshadweep. Applicants were some of the beneficiaries of such work orders. Respondents have, therefore, submitted that applicants were attending work on purely work order basis and there is no question of considering their request on regular basis on the basis of the Annexure A-1 Memorandum dated 25.7.1994.

5. As regards the submission of the applicant regarding 3 posts lying vacant in the Department for which application has been invited vide Annexure A-9 order dated 2.2.2007, they have submitted that those posts are to be filled up in accordance with the existing Recruitment Rules and the request of the applicant to consider the long period of service rendered by them cannot be considered as they were carrying out the works in the Department on work order basis and not as Government servants. However, if they had applied for those posts and if they fulfil the conditions prescribed in the Recruitment Rules, they will be duly considered for appointment.

6. We have heard the learned counsel on both sides. It is seen that the prayer of the applicants is to consider them for appointment in terms of Annexure A-1 letter dated 25.7.1994. As admitted by the applicants themselves, they have made a representation to that effect only on 22.1.2007 (Annexure A-8). i.e. after nearly 13 years. No doubt, the respondents have conducted interview/test for selection to the post of Forklift Operators on Work Charged Establishment of Lakshadweep Harbour Works on 20.8.1994, and the applicants

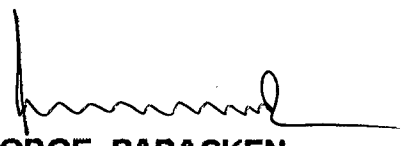
✓

have participated in the selection but it was in anticipation of their proposal to create the posts of Forklift Operators to operate the Fork Lift Trucks. However, for administrative reasons, the proposal for creation of posts of Fork Lift Operators was not accepted by the competent authority and therefore, no appointments could be made on the basis of the interview/test held on 20.8.1994. Moreover, the respondents have already got the work carried out on contract basis and the applicants themselves were some of the beneficiaries of such contract system. The applicants have very well accepted the above position and, it is for that reason they have not made any representations against their non-selection for the last 13 years. Even otherwise, as held by the Apex Court in a catena of cases and reiterated in **State of U.P. and others v. Rajkumar Sharma & others** [2006 SCC (L&S) 565], *"Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination."*

7. In the above facts and circumstances, we do not find any merit in these cases and accordingly they are dismissed. There shall be no order as to costs.

Dated, the 17th September, 2008.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

trs