

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.621/2008
ALONGWITH
O.A.NO.17/2009
ALONGWITH
O.A.NO.683/2008

Tuesday this, the 15th day of December, 2009

CORAM:

HON'BLE SRI K.B.S.RAJAN, MEMBER(J)
HON'BLE SRI K.GEORGE JOSEPH, MEMBER(A)

O.A.No.621/08

1. Abdul Gafoor K.P,
S/o. Syed Muhammed, aged 24 years,
Kattampally, Agatti, Lakshadwccp.
2. M.I.Salahudeen,
S/o Fathahulla, aged 24 years,
Melaillam, Kadamat, Lakshadweep.
3. Jamaludheen M.S,
S/o. Abdul Khader, aged 30 years,
Melasurambi, Kadamat, Lakshadweep.
4. Muhuseen T.K.,
S/o Koyammu, Aged 29 years,
Thenekhal, Agatti, Lakshadweep. .. Applicants

By Advocate : Sri V.V.Asokan

vs.

1. Executive Engineer,
Electricity Department,
Kavarathi, Lakshadweep.
2. The Administrator,
Union Territory of Lakshadweep,
Kavarathi.
3. T.Shammone, Therakkal,
Kadamat, Lakshadweep.

4. Musthafa M.V.,
Mathil Valiaymada,
Kalpeni, Lakshadweep.
5. N.P.Mohammed Abdul Nazer,
Nilathupura, Androth,Lakshadweep.
6. Mahamed Yasin S.M.,
Amini, Lakshadweep.
7. Mohamed Abdul Saleem,
K.Kunthathalam, Androth,
Lakshadweep. .. Respondents

By Advocate : Sri S.Radhakrishnan(R1 & R2)
Sri P.K.Ibrahim (R5)

O.A.No.17/09

N.P.Abdul Salam, S/o Kunnikoya,
Nenampappada House,
Kalpeni P.O., Lakshadweep. ..Applicant

By Advocate :Dr V.N.Shankarjee

vs.

1. Executive Engineer,
Electricity Department, Kavarathi, Lakshadweep.
2. The Administrator,
Union Territory of Lakshadweep, Kavarathi, Lakshadweep.
3. T.Shammone, Therakkal,
Kadamat, Lakshadweep.
4. Musthafa M.V.,
Mathil Valiaymada, Kalpeni, Lakshadweep.
5. N.P.Mohammed Naser,
Nilathupura, Andrott, Lakshadweep.
6. V.K.Abdul Haque,
Vadakkukoodam, Agatti, Lakshadweep.
7. Saifulla.K., Kunnashada, Andrott, Lakshadweep.
8. Noor Hassan, S.P.Sailaniyapura, Kiltan.

9. Mohammed Yasin S.M., Salamath Manzil,
Amini, Lakshadweep.
10. Abdul Mukthar.K., Kattimmada,
Kavaratti, Lakshadweep.
11. Mohammed Abdul Saleem.K.,
Kunthathalam, Andrott, Lakshadweep.
12. Ashraf M.I., Melaillam.,
Amini, Lakshadweep.
13. Saifurahman S.M., Shahida Manzil,
Kiltan, Lakshadweep.
14. Abdul Gafoor K.P.
Kattampalli, Agatti, Lakshadweep.
15. M.I. Salahudeen,
Mcillaillam, Kadmat, Lakshadweep.
16. Jamaluddeen M.S.,
Melasurambi, Kadmat, Lakshadweep.
17. Muhseen T.K.
Thenakkal, Agatti, Lakshadweep.
18. M. Mohammed Shafee, Mannathanoda,
Kavaratti, Lakshadweep. .. Respondents

By Advocate : Mr.S.Radhakirshnan (R1 & 2)
Mr. P.K.Ibrahim(R5)

O.A.No.683/08

1. C.P. Noorul Hassan, S/o Shajahan Sahib K.P., Chachalakapada,
Agatti, Lakshadweep.
2. Abdul Manaf K.P, Koliyappura House, Kavaratti. .. Applicants

By Advocate : Sri Vinod Vallikkappan

vs.

1. The Administrator, Union Territory of Lakshadweep, Kavaratti.
2. The Executive Engineer(Ele), Office of the Administrator, Union
Territory of Lakshadweep, Department of Electricity, Kavaratti
Island, Lakshadweep.

3. T.Shammone, Therakkal, Kadamath, Lakshadweep.
4. N.P.Mohammed Abdul Naser, Nilathupura, Androth,Lakshadweep.

... Respondents

By Advocate: Sri S.Radhakrishnan (R1 &2)
Sri P.K.Ibrahim (R4)

The application having been heard on 09.12.2009, the Tribunal on
delivered the following:-

ORDER

HON'BLE MR.K.GEORGE JOSEPH, MEMBER(A):

Having the common thread of selection procedure adopted by the Lakshadweep Administration for filling up the posts of Oilman/Mazdoor in the Electricity Department, the above three O.As were heard together. As the first applicant in O.A. No. 621/08 is already appointed as Oilman, he is not pressing the O.A. leaving the field for the remaining 3 co-applicants. The above O.As seek to quash the select list published by the official respondents, and for a direction to include the name of the applicants in the select list and to give them appointment orders to the posts of Oilman/Mazdoor in the Electricity Department of Lakshadweep.

2. The respondents had invited applications for appointment to 2 posts of Oilman/Mazdoor in the Lakshadweep Electricity Department by notice dated 28.9.06. Another notice was issued on 5th June, 2007 inviting applications for one additional post of Oilman/Mazdoor stating that those who have already applied in response to the advertisement dated 28.9.06 need not apply again. A third notice was issued on 22nd April 2008 inviting applications for appointment to 10 posts of Oilman/Mazdoor in the Lakshadweep Electricity Department with a dispensation that those who have already applied in response to the notice dated 5.6.07 need not apply again as their cases will be considered as candidates for the posts notified in the notice dated 5.6.07. The age limit was uniform,i.e. 18 to 25 years with 5 years relaxation for ST in respect of the 3 notices. The educational qualification was SSLC Pass with ITI certificate in Electrician, Wireman

or Mechanic Diesel in all the 3 notices. The crucial dates for determination of age were determined as the last dates fixed for receipt of applications, i.e. 30.6.07 and 15.5.08 for the last two advertisements respectively. No such mention was made in the first advertisement. Vide the notification dated 2nd September, 2002 the Administrator, Union Territory of Lakshadweep was empowered to relax any of the provisions pertaining to method of recruitment, age limit and other qualifications etc. for reasons to be recorded in writing. Extracts relevant to age limit for direct recruits and educational and other qualifications required for direct recruits are reproduced from the schedule to the said notification, as under:-

“7. Age limit for direct recruits : Between 18-25 years

Relaxable for 5 years for SC/ST and 3 years for OBCs. Upto 40 years of age for Departmental candidates with 3 years continuous service for general category and 45 years for SC/ST and 43 years for OBCs and all other categories of persons notified by the Govt. of India from time to time.

The crucial date for determining the age limit shall be the last date on which the employment exchange is asked to sponsor candidates.

8. Educational and other qualifications required for direct Recruits.

Essential

1. SSLC Pass.
2. ITI certificate in Electrician, Wireman or Mechanic Diesel.”

The applicants challenge the selection procedure adopted by the respondents for filling up the posts of Oilman on the ground that certain respondents who got selected are overaged and certain others who got selected are diploma holders and do not have ITI qualification. Further, percentage of marks obtained in SSLC and ITI has been made as sole criterion for selection. No written test or interview was conducted. A consolidated select list was published for the years 2006, 2007 and 2008. Therefore the select list being vitiated by arbitrariness, illegality and discrimination should be quashed and set aside.

3. The respondents contested the O.A.s. The educational qualification stipulated in the

RR of a post is the minimum requirement. It does not debar persons with higher qualifications from being considered for appointment. There are precedents where candidates possessing higher qualification of Degree/Diploma in Electrical Engineering got selected in the year 2004. Candidates possessing higher qualifications were not given any preference over the candidates who were having only essential qualification. The percentage of marks secured in Degree/Diploma exams were only considered for selection. No additional mark was allowed for their higher qualification.

4. The Administrator of Lakshadweep had issued an order dated 28.4.07 whereby recruitments were to be made on the basis of educational qualifications/ experience only without conducting tests/interviews wherever the RR of the posts in question do not provide for holding tests/interviews. There was no provision for conducting written tests in the RR for the post of Oilman. Respondent Nos. 4 and 5 in O.A. No.621/08 are not over-aged as they applied during 2006 in response to notice dated 28.09.2006, wherein it was mentioned that 2 years age relaxation would be allowed on account of direct open merit exam and thereby the candidates who are within the age of 32 years by 31.10.06 were eligible for applying for the post. The dates of birth of respondent No.4 and 5 are 7.12.1974 and 12.12.1976 respectively and they are within the age of 32 years as on 31.10.2006.

5. The recruitment committee had prepared yearwise panel but the competent authority had decided to merge the candidates together and a combined select list was prepared in accordance with the provisions contained in the order No. 12/37/2005-Services dated 28.4.2007. ITI certificate holders irrespective of their course duration were considered for the posts during the selection and no weightage was given to any higher level certificate. In the light of the above facts and circumstances, the respondents sought dismissal of the O.A.

6. Arguments were heard and documents perused.

7. The learned counsel for the applicants relied upon **P.M.Latha and Another vs. State of Kerala and Others; (2003)3 SCC 541** to drive home the point that consideration of higher qualification other than that prescribed in the advertisement is not justified. The relevant extract is given below:-

"10. We find absolutely no force in the argument advanced by the respondents that BEd qualification is a higher qualification than TTC and therefore, the BEd candidates should be held to be eligible to compete for the post. On behalf of the appellants, it is pointed out before us that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for BEd degree, the training imparted is to teach students of classes above primary. BEd degree-holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or BEd qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not BEd. Whether BEd qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider BEd candidates, for the present vacancies advertised, as eligible.(emphasis supplied)

The judgment of the Apex Court does not come to the aid of the applicants. TTC is a specialized course for training teachers to teach small children in primary classes. In B.Ed degree course training is given to teachers to teach students of classes above primary. In the present O.A. the case is different. A Degree/Diploma in Electrical Engineering or Mechanical Engineering is definitely a higher qualification than an ITI in Electrician/Wireman or Mechanic Diesel. As they are in the same line, they are not different specializations as B.Ed and TTC are. SSLC Pass with ITI Certificate is shown as the essential educational qualification for the post of Oilman in the schedule to the notification dated 2nd September, 2002. The Essential Qualification is not shown as the only qualification. It is not specifically provided that only ITI candidates need apply for the post of Oilman. The word 'Essential' denotes the barest minimum educational qualification. It does not rule out higher qualification in the same field. ITI qualification is to be treated as pass mark for being eligible for consideration to the post of Oilman. Higher mark than the pass mark will not constitute a disqualification. In fact it is preferable in the overall scheme of things to have higher qualified persons for better performance. The Diploma holders were not given any special favour by way of additional mark for their higher qualification. They were treated at par with the ITI candidates in so far as only the percentage of marks secured in Diploma/ITI examinations were taken into account. There are precedents, as averred by the

respondents, for having selected candidates possessing higher qualification than IITI for the post of Oilman in the year 2004. Therefore, we do not find any merit in the argument that the select list in question is vitiated by arbitrariness, illegality or discrimination.

8. As far as overage is concerned, the respondents have shown beyond doubt that no favoritism was shown to any particular candidate. The respondents were fair and just in extending the uniform maximum age limit of 32 years to all the candidates, although initially this higher age limit was meant only for those who responded to the notice dated 28.9.06 as they were expected to compete in a competitive examination(written test). Therefore the contention that certain candidates were favoured with relaxation in age limit lacks merit.

9. The Lakshadweep Administration had shown the number of posts as 10 in the notice dated 22.4.2008. As per records the 10 posts consisted of 2 posts notified in 2006, 1 in 2007 and 7 for the year 2008. On account of certain administrative bottlenecks no appointment was made against the vacancies for the year 2006 and 2007. All the vacancies were clubbed together in the final notification. It was open to the Administration to cancel the earlier notifications, instead the Administration decided to validate the applications already received in respect of the 2 earlier notices for the final notice dated 22nd April, 2008. We find no malafide in this decision.

10. The recruitment committee has prepared yearwise select list for the year 2006, 2007 and 2008. The competent authority decided, having allowed uniform age relaxation of 2 years to all the candidates who applied during 2006, 2007 and 2008, to have a combined select list for all the 3 years based on which appointments were made. In doing so certain applicants who were included in the yearwise list did not find a place in the combined select list and certain others who were not in the yearwise lists found their way into the list. It is difficult to find any injustice or discrimination in preparing a combined select list. The function of the Government is to govern and not to distribute Government jobs to all its citizens. Governing at times may require undertaking certain activities or providing certain services essential for the people, for which purpose eligible candidates are recruited in an open, fair and transparent manner. Those who are more

meritorious are selected for appointment for discharging functions of Government. It is in the interest of the State that meritorious candidates man Government posts. From this point of view the Administration cannot be faulted for having a combined select list for the years 2006, 2007 and 2008.

11. The corrigendum dated 24.7.2008 had reduced the number of vacancies to 7 from 10 treating as a result the 2 vacancies of 2006 and 1 of 2007 as distinct and separate. It entailed preparing separate yearwise select lists for 2006, 2007 and 2008. Because those who responded to the notice issued in 2006 could be considered for all the three years; those who responded in 2007 could be considered for vacancies for 2007 and 2008; those who responded in 2008 could be considered for the vacancies for that year only. This was due to the enabling provision in the notices of 2007 and 2008. But the competent authority did not approve of the separate select lists instead a common select list was prepared and appointments were made accordingly. It is seen that two candidates of 2006 namely Shri Musthafa M.V, Mathil Valiyammada, Kalpeni and Sri Saifurrahman, S.M, Sahida Manzil, Kiltan and one of 2007 namely Shri Ashraf, M.I, Melaillam, Amini, have been given appointment. As justice is not denied to the deserving candidates, this Tribunal refrains from interfering with the administrative process which suffered lapses like not cancelling the notices when selection was not possible within a reasonable time due to administrative reasons and not informing the candidates about the same with necessary explanation, the corrigendum reducing the number of vacancies and so on.

12. Yet we are constrained to make the following observations. Once the process of selection is started, it should be completed at the earliest without subjecting it to material changes. If change of substantial nature is warranted, it is better to cancel the selection process after informing the applicants of the same, giving reasons and relief wherever possible in the subsequent attempts. In the instant case, dropping of written test was good enough reason to cancel the notice of 28.9.06. The raising of maximum age limit to 32 was not communicated to all applicants. The corrigendum of 24.7.08 only complicated the matter. Transparency and sensitivity to the public can only enhance the prestige of the administration and reduce the distance between the administration and the administered. Only such a proactive attitude on the part of the

administration can generate confidence in the public and bring forth their meaningful participation in successfully managing the affairs of the State.

13. No written test or interview was conducted as there was no provision in the RR for the same. Therefore the Administration cannot be faulted. The percentage of marks obtained by the candidates in their respective examinations was the criterion for selection in accordance with the RRs.

14. In the light of the discussion above we are of the considered view that the O.As lack merit and are liable to be dismissed.

15. Accordingly the O.As are dismissed. No order as to costs.

(K. George Joseph)
Member(A)

(Dr. K. B. S. Rajan)
Member(J)

/njj/