

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 184 of 2003

Wednesday, this the 5th day of March, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. Jameela Beagum V.K.K.M.M,
Radiographer, Community Health Centre,
Androth, Union Territory of Lakshadweep.
(Residing at Valiyakolikkad Mubarak Manzil,
Androth Island, Union Territory of
Lakshadweep).Applicant

[By Advocate Mr. T.M. Raman Kartha]

Versus

1. Union of India represented by the
Secretary to Govt. of India,
Ministry of Health & Family Welfare,
Department of Health, New Delhi.

2. Secretary to Govt. of India,
Ministry of Health & Family Welfare,
Department of Health, New Delhi.

3. Administrator,
Union Territory of Lakshadweep,
Kavarathi.

4. The Director of Medical and Health Services,
Administration of the Union Territory of
Lakshadweep, Directorate of Medical and
Health Services, Kavarathi.

5. Asif Ibnu Barkhiya. A,
S/o Bithnat Mohamed,
residing at Aliyathara House,
Androth Island, Union Territory of Lakshadweep.

6. Jabbar Khan. B,
S/o late Yakhub, Kannichetta,
residing at Bithnat House, Androth Island,
Union Territory of Lakshadweep.Respondents

[By Advocate Mr. C. Rajendran, SCGSC (R1 & R2)]

[By Advocate Mr. S. Radhakrishnan (R3 & R4)]

The application having been heard on 5-3-2003, the
Tribunal on the same day delivered the following:

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O R D E R

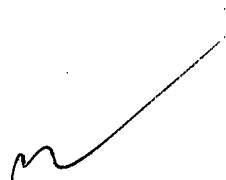
HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who has been working as Radiographer on adhoc basis has filed this application challenging Annexure A-9 order dated 4-2-2003 of the 2nd respondent revoking the termination of services of respondents 5 and 6, Annexure A-10 and A-11 orders dated 26-2-2003 of the 4th respondent reinstating respondents 5 and 6 as Radiographers and Annexure A-12 order dated 28-2-2003 of the 4th respondent dispensing with the service of the applicant as Radiographer on adhoc basis, but, however, allowing her to work on adhoc basis as Radiographer in the leave vacancy of one Shri P.Kidava Haji for 60 days. Facts necessary for disposal of this application at this stage can be briefly stated as follows:-

2. Respondents 5 and 6, who did not have the requisite qualification under the Recruitment Rules (Annexure A-1) for the post of Radiographer, were appointed as Radiographers and they continued in service for six years. While so, on the ground that they did not possess the qualification prescribed in the Recruitment Rules, their services were terminated under Temporary Status rules. Respondents 5 and 6 challenged the orders by which their services were terminated by filing OA 321/2000 and OA 322/2000 before this Bench of the Tribunal. This Bench of the Tribunal by order dated 8-8-2001 (Annexure A-7), finding that they did not acquire a right to hold the post as they were not in possession of the requisite

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educational qualification under the Recruitment Rules, dismissed the applications. Respondents 5 and 6 carried the matter before the Hon'ble High Court of Kerala in OP.No.24423/2001. The Hon'ble High Court of Kerala vide its order dated 19-2-2002 (Annexure A-8) did not interfere with the Tribunal's order, but permitted the petitioners therein (respondents 5 and 6 herein) to make a representation to the competent authority and directed the competent authority to consider their representation taking into account the fact that they have been continuing for a long time. Pursuant to the above direction, respondents 5 and 6 submitted their representations. After considering their representations, in the light of the facts and circumstances the 2nd respondent has issued the impugned order Annexure A-9 revoking the termination of their services and directing the Administrator, Union Territory of Lakshadweep to issue orders regulating the period during which they were kept out of service. Consequential orders (Annexure A-10 and A-11) were issued by the 4th respondent reinstating the respondents 5 and 6 in service. In the meanwhile, on account of the termination of the services of respondents 5 and 6, the applicant was selected for adhoc promotion as Radiographer. The applicant possessed the requisite qualification under the Recruitment Rules to hold the post of Radiographer. The applicant was appointed by Annexure A-6 order dated 25-10-2002 making it clearly understood that the appointment would be terminated without notice at any time



and would be tenable till a regular appointment is made. Since the reinstatement of respondents 5 and 6 on the basis of Annexure A-9 order has resulted in the dispensation of the services of the applicant as Radiographer on adhoc basis and her services have also been dispensed with by Annexure A-12 order, the applicant is aggrieved and she has filed this application seeking to set aside the orders at Annexure A9, A-10, A-11 and A-12. It has been alleged in the application that since respondents 5 and 6 did not possess the requisite educational qualification under the Recruitment Rules, the Tribunal as also the Hon'ble High Court of Kerala found that they did not have a right to hold the post and therefore, the action taken by the 2nd respondent contrary to that is unsustainable.

3. We have gone through the application and all the materials placed on record and have heard Shri T.M.Raman Kartha, learned counsel of the applicant, Shri C.Rajendran, SCGSC appearing for respondents 1 and 2 and Shri S.Radhakrishnan, learned counsel of respondents 3 and 4.

4. We find, even prima facie, no infirmity with any of the impugned orders calling for admission of this application. The argument of the learned counsel of the applicant that Annexure A-9 order passed by the 2nd respondent is opposed to the spirit of the judgement of the Tribunal in OA 321/2000 and OA 322/2000

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which has been upheld by the Hon'ble High Court of Kerala in its order in OP No.24423/2001 and therefore is not sustainable does not appeal to us. In the order of the Hon'ble High Court, respondents 5 and 6, who were the petitioners before it, had been given permission to make a representation. Their representations have been considered and the 2nd respondent, who is the competent authority, taking into account the fact that respondents 5 and 6, though did not possess the requisite qualification, had been performing the duties of Radiographers over a period of time to the entire satisfaction of the department and nothing adverse have come to notice, relaxed the educational qualification and revoked the order of termination of their services. The 2nd respondent is the competent authority to relax any of the provisions of the Recruitment Rules. Therefore, the order passed by the 2nd respondent, viz. Annexure A9, cannot be said as without jurisdiction or illegal. Annexure A-10 and A-11 are only consequential orders of revocation of the orders of termination. Therefore, they also cannot be said as without jurisdiction. Annexure A-12 order, which is in consonance with Annexure A-6 order of the applicant's appointment also cannot be faulted.

5. Learned counsel of the applicant invited our attention to the ruling of the Apex Court in State of M.P and another vs. Dharam Bir [(1998) 6 SCC 165], wherein it has been observed as follows:-

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""Experience" gained by the respondent on account of his working on the post in question for over a decade cannot be equated with educational qualifications required to be possessed by a candidate as a condition of eligibility for promotion to higher posts. If the Government, in exercise of its executive power, has created certain posts, it is for it to prescribe the mode of appointment or the qualifications which have to be possessed by the candidates before they are appointed on those posts. The qualifications would naturally vary with the nature of posts or the service created by the Government. . . ."

Referring to the above extracted paragraph, learned counsel of the applicant argued that relaxation in qualification, if at all to be made, has to be made before appointment and not thereafter. Reading the above paragraph over and over again, we could not find that there was any such intention. It only states that it is the prerogative of the Government to prescribe the qualification before appointment and does not say that relaxation cannot be made after the first appointment. On the other hand, in the said judgement itself, the Apex Court has held that it is not for the Tribunal or High Court to relax the qualifications usurping the powers of the Government and it is for the Government to relax the qualification. It is under these circumstances that the Hon'ble High Court of Kerala permitted the respondents 5 and 6 to make representation to the competent authority for revocation of the termination by relaxing the qualification under the Recruitment Rules and it was on that basis that Annexure A-9 order has been issued. Now that the dispensation of the services of the applicant, which was only adhoc and tenable till a regular appointment is made, is a necessary consequence of Annexure A9 to Annexure A-11

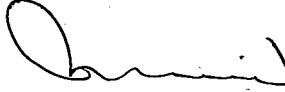


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orders. However, the applicant has not been totally thrown out of service and has been accommodated in a leave vacancy. We do not find any legitimate grievance of the applicant which calls for redressal by this Tribunal.

6. In the light of what is stated above, the Original Application is rejected under Section 19(3) of the Administrative Tribunals Act, 1985.

Wednesday, this the 5th day of March, 2003


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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