

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Original Application No. 226 of 2008

Wednesday, this the 12<sup>th</sup> day of November, 2008

**C O R A M :**

***HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER***  
***HON'BLE MS. K NOORJEHAN, ADMINISTRATIVE MEMBER***

P.P. Badarudeen,  
S/o. M.C. Ebrahim,  
Residing at Pathummapura,  
Kadamat Island,  
Union Territory of Lakshadweep ... Applicant.

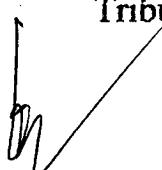
(By Advocate Mr. N. Unnikrishnan)

v e r s u s

1. The Administrator,  
Union Territory of Lakshadweep,  
Kavaratti.
2. The Director of Port, Shipping &  
Aviation, U.T. of Lakshadweep,  
Kavaratti : 682 555
3. The Deputy Collector,  
U.T. of Lakshadweep, Kavaratti.
4. The Sub Divisional Officer,  
U.T. of Lakshadweep (Chairman of the  
Selection Committee), Kadamat Island ... Respondents.

[By Advocates Mr. S. Radhakrishnan (R1-4) and  
Mr. M. Muhammed Shafi (R5)]

The Original Application having been heard on 6.11.08, this  
Tribunal on 12.11.08 delivered the following:



O R D E R  
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant initially was aggrieved as he was not called for the selection test for the post of Boat Lascar in the respondents' organization. Reason stated by the respondents was that he did not reflect his age properly in his application. He was, by an interim order of this Tribunal, permitted to take necessary swimming test. It was directed that one post of Boat Lascar be kept unfilled and result of the applicant be also not published. He qualified in the first round. Final test was held in fifteen batches in which participants were on the basis of toss, each batch containing 3 in respect of first ten batches and four each in the next five batches. In the final test the applicant along with two others participated in the fourth batch. The applicant alleged that a rival candidate pulled his leg while he was to reach the target and hence, has now claimed that the selection should be held afresh in respect of that batch. Annexure A-14 letter dated 07-05-2008 refers. This was followed by Annexure A-15.

2. Both the official respondents as well as the private respondents contested the O.A. According to the official respondents, the applicant was not able to reach first from his batch and accordingly his name was not included in the final selection list. Of course, on receipt of Annexure A-14

and A-15, a communication was sent to the Station House Officer to make available copy of the report submitted by the Police Personnel on duty who had witnessed the swimming test. The said letter reads as under:-

"The Department has conducted the final selection test of swimming on 7.5.2008 at the Jetty premises. The test was conducted for 15 batches consisting of 3 candidates in the first 10 batches and 4 candidates in the remaining 5 batches. While the swimming test was going on for the 4<sup>th</sup> batch 2 candidates are overlapped one on the other. The Police personnel were on duty and they have viewed the incident. Now one Shri P.P. Badarudheen, Pathimapura, Kadmat, a failed candidate in that particular batch represented that he was pulled by other candidate and due to this he has not been selected.

Therefore, it is requested that the copy of the report submitted by the Police Personnels on duty in your general diary may please be furnished to the undersigned for further processing the matter.

Treat this as most urgent."

3. Private respondent has also filed his version and stated that the applicant cannot turn around to question the selection when he had already participated and was not successful.

4. Rejoinder, Additional reply and Additional Rejoinder have all been exchanged.

5. Counsel for the applicant vehemently argued that the entire selection process is a farce. He has stated that there has been no stop clock to

A handwritten signature in black ink, appearing to read 'B. N.' or a similar name, is written over a diagonal line.

ascertain as to who qualified in the test and even the selection committee did not have any expert in swimming. He has therefore submitted that interest of justice would be rendered if the Tribunal directs conducting a fresh selection in which the fourth batch members be allowed to participate.

6. Counsel for the respondents submitted that the selection committee has been rightly constituted. The Sports Organizer, Government Senior Secondary School, Kavaratti was invited as a member and he attended in the selection process. The police authorities have clarified that there was no pulling of any person from behind that was noticed by them.

7. Arguments were heard and documents perused. The complaint to the Director, Port Shipping & Aviation filed by the applicant reads as under:-

“Sub: Irregularities in the swimming test conducted for the post of Boat Lascar - grievances submitted - reg.

Sir,

I respectfully submit the following for kind perusal and early favourable orders. I am a candidate provisionally selected from Kadmat, by a practical swimming test conducted at Kadmat for the final practical swimming test to be held at Kavarathi, for the post of Boat Lasker. Accordingly, I took part the swimming competition held at Kavarathi on 7/05/08. There were three members in each group for the test. In my group apart from me there was one candidate from Kavarathi and another from Amini. I was in the far front through out the competition. But at the finishing point the candidate from Kavarathi who was just behind me pulled me from my back and because of that both of us

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touched the finishing point at the same time. Immediately I represented the matter to the jury who was also watching the foul play. But my submission was not considered even though I serve justice. The decision of the jury selecting the Kavarathi candidate is clearly against the spirit of natural justice. They could have ordered for another test to avoid the confusion.

In this situation I have no other way except to bring this malpractice to the notice of you goodself for an enquiry and order for a re test to my batch until then the final list may be kept in abeyance.”

8. The next day, another complaint on the next day, i.e. 8<sup>th</sup> May, 2008 and the same reads as under:-

“Sub: Irregularities in the swimming test conducted with the selection of Lascar - grievances submitted - reg.

Sir,

I respectfully submit the following for kind perusal and early favourable actions. I am a candidate provisionally selected from Kadmat, by a practical swimming test conducted at Kadmat for the final practical swimming test to be conducted at Kavarathi, in connection with the final swimming test for the post of Boat Lasker. Accordingly, I reported for the test and I was put in batch No. 4. In my batch apart from me, there was one candidate from Amini and one Abdul Muthalif from Kavarathi. I was swimming in the far front since the beginning of the test. When we came near to the finishing point at the same time. There was eye witness whose name and signature are also obtained to substantiate my claim. When I represented this matter to the Officers who were conducting the test, did not need me and they recorded the result in favour of Shri Abdul Muthalif. Since I am a non-native of Kavarathi, I did not get the support of the Kavarathi people who assembled there. In this situation I fear that my eligibility will not be considered and I will lose my chance for ever.



Therefore, I must humbly request you to look into the matter and order for a retest to my batch to prove my ability.

Name and signature of eye witness :

1. MB Shahajan Kadmat
2. Rafeek Sarechetta Amini "

9. A perusal of the above would go to show that the grievance of the applicant is that he being a non-Kavarathi candidate, he was ditched and a Kavarathi native has been selected; that all those who were watching were natives of Kavarathi Island and hence supported the private respondent. There is no basis for such an apprehension. If the Selection Committee is biased, then, out of 51 candidates who participated, none of the non-Kavarathi natives would have been selected. When records have been scrutinized, at least 9 out of 13 are found to be non-Kavarathi natives. The applicant cannot thus, bring in the 'sons of the soil' theory when he has failed in the selection.

10. It has been observed by the Apex Court in the case of *Union of India v. Bikash Kuanar*, (2006) 8 SCC 192 –

*14. When a Selection Committee recommends selection of a person, the same cannot be presumed to have been done in a mechanical manner in absence of any allegation of favouritism or bias. A presumption arises in regard to the correctness of the*

*b*

*official act. The party who makes any allegation of bias or favouritism is required to prove the same.*

11. Though the applicant has raised the issue of bias, there is absolutely nothing to show that there was any favouritism. The police report also does not support the case of the applicant. His apprehension that natives have been favoured is only illusory.

12. Thus, the O.A. is devoid of merits and hence dismissed. No costs.

(Dated, the 12<sup>th</sup> November, 2008)

  
**(K NOORJEHAN)**  
**ADMINISTRATIVE MEMBER**

  
**(Dr. K B S RAJAN)**  
**JUDICIAL MEMBER**

cvr.