

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.Nos.288/13 & 403/13

Tuesday, this the 4th day of February, 2014.

CORAM :

HON'BLE MR.JUSTICE A.K.BASHEER, JUDICIAL MEMBER

HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

In O.A.No.288/2013:

Rubayya Kasim Bintah,
D/o Sh. Jamaludheen C.,
Chalakkad House,
Agatti Island,
Lakshadweep.

.....Applicant

(By Advocate Mr. Vinod Vallikkappan)

Vs.

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti-682 555.
2. The Deputy Collector (HQ),
Collectorate,
Kavaratti,
Union Territory of Lakshadweep -682 555.
3. Sadath T.P.,
Thithiyapada House,
Kalpeni Island,
Union Territory of Lakshadweep-682 557

..... Respondents

(By Advocates Mr.S.Radhakrishnan (R1&2)
Mr.V.Varghese (R3)

In O.A.No. 403/2013 :

Mr.Mohammed Hussain K.C.,
S/o Sh.T.Kasim,
Karichechetta House,
Kadamath,
Union Territory of Lakshadweep – 682 556

..... Applicant

(By Advocate Mr.S.Arun Raj)

Vs.

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti-682 555.

2. The Deputy Collector (HQ)
Collectorate
Administration of the Union Territory of Lakshadweep,
Union Territory of Lakshadweep
Kavaratti -682 555.

3. Sadath T.P.
Thithiyappada House
Kalpeni
Union Territory of Lakshadweep

..... Respondents

(By Advocates Mr.S.Radhakrishnan (R1&2)
Mr.V.Varghese (R3)

The Applications having been heard on 04.02.2014, the Tribunal on the same day delivered the following :

ORDER

HON'BLE Mr. JUSTICE A.K.BASHEER, JUDICIAL MEMBER

The short common question that arises for consideration in these two Original Applications is whether the respondents had committed any illegality or irregularity in the selection process held by them for recruitment to the post of Draftsman/ Deputy Surveyor in the Department of Revenue under the Union Territory of Lakshadweep.

2. Shorn of unnecessary details, the essential facts which are necessary to determine the above issue, may be briefly noticed.

3. The two applicants and Respondent No.3 along with several others had applied for the post of Draftsman/Deputy Surveyor in response to Annexure A-2 Circular dated December 29, 2012, which notified two vacancies. The essential as well as desirable qualifications prescribed for the above post of Draftsman/ Deputy Surveyor are extracted hereunder for the sake of convenience.

Essential

1. Pass in 10+2 (PDC) or equivalent

2. Pass in 3 months Chain Survey (lower) course conducted by Govt. of Kerala or from any other recognized board.
3. Certificate course in Computer applications for a minimum period of 3 months.

Desirable

Certificate course of minimum 3 months in Auto CAD.


4. It is not in dispute that the two applicants and Respondent No.3 do possess the essential as well as desirable qualifications. But, according to the official respondents, Respondent No.3 did not produce along with his application any certificate to show that he possessed the "desirable qualification" in Auto CAD whereas the applicants did. The defect in the application of respondent No. 3 was indicated in Annexure A-3 Check List published by the Administration on March 4, 2013 after scrutiny of the applications. In this notice, the Administration had informed the candidates that "if any mistake found or having any objection, the candidates may intimate the fact to the Authority concerned in writing with proof".

5. It is pertinent to note that in Annexure A3 Check List, the Recruiting Authority had incorporated particulars like date of birth, caste status, educational qualification, marks obtained in the qualifying examination as well as the marks awarded for 'desirable qualification' etc. of all the candidates who had applied for the post. Respondent No.3 had obtained 68% marks in the Higher Secondary Examination whereas applicant in OA No. 288/2013 had got only 59.58% and the applicant in OA No. 403/2013 had scored 64.16% marks. But, by virtue of 15 marks awarded to the two applicants for the desirable qualification of Auto CAD, they had obtained total marks of 74.58% and 79.16% respectively. Since respondent no.3 had not been awarded any marks for the 'desirable qualification' as he had not produced the Auto CAD certificate, he had scored only 68% marks as indicated in Annexure A3 Check List.

6. It is beyond controversy that Respondent No.3 produced the Auto CAD Certificate in response to Annexure A3 and thus "rectified the defect" that was noticed by the Administration while processing the applications. Thereafter, Annexure A1 Final Select List was published on March 30, 2013. Respondent No.3 was placed at Sl.No.1 in the said list and applicant in O.A.No.403/2013 was at Sl.No.2. Thus, applicant in O.A.No.288/2013, who had obtained the next higher mark as compared to the applicant in O.A. No. 403/2013 lost out in the race.

7. It is in the above circumstances, these two Original Applications have been filed challenging the action taken by the official respondents in accepting the Auto CAD Certificate produced by respondent no.3 at a belated stage of the selection process. It is contended by the applicants that the Official Respondents were not justified in allowing Respondent No.3 to produce the said document which enabled him to get 15 marks and thereby tilt the balance in his favour. In this context, the applicants point out that in Annexure A2 Circular, it had been made specifically clear by the Administration that "applications received without attested copies of testimonials will not be entertained and summarily rejected".

8. Per contra, it is contended by Respondent No.3 that Auto CAD Certificate is only a "desirable qualification" as is evident from Annexure A2 Circular itself. Indisputably Respondent No.3 has got all the three essential qualifications. More importantly, he has obtained the maximum marks in 10+2 examination as compared to the two applicants. While conceding that the 15 marks awarded to him on the basis of the Auto CAD Certificate had ultimately tilted the balance in his favour, it is contended by Respondent No.3 that all the candidates including the two applicants were awarded 15 marks each for the "desirable qualification". Therefore, the Auto CAD Certificate being only a desirable qualification, its nonproduction along with the application did not have any bearing on the selection process at all. The attempt of Respondent No.3 is obviously to show that the crucial or vital factor which fell for consideration was the marks obtained




by the candidates in the 10+2 Examination. Admittedly respondent no.3 had got more marks than the two applicants in this Examination.

9. It has to be remembered that every candidate is bound to comply with the instructions as prescribed by the Recruiting Authority in the Advertisement/ Notification scrupulously. In Annexure A2 Circular, it was made clear that application unaccompanied by attested copies of testimonials will be liable to be rejected summarily. It is true that Auto CAD Certificate is only a "desirable qualification". It is also true that the Recruiting Authority had awarded 15 marks each to all the candidates, who possessed such a certificate. But still the fact remains that respondent no.3 got included in the Select List only by virtue of the 15 marks awarded to him on the strength of the Auto CAD Certificate. In this context, it is only pertinent to note that curiously, no marks are seen awarded to any of the candidates for the other "essential qualifications" namely 'Pass in three months' Chain Survey Course and Certificate Course in Computer Application (3 months duration).

10. Be that as it may, the short question is whether the official respondents were justified in relaxing the condition in Annexure A2 Circular and allowing Respondent No.3 to produce the Auto CAD Certificate at a later stage. No Rule or Regulation enabling the Recruiting Authority to give such a relaxation has been brought to our notice. Still further, the Check list did not give any clue that the Recruiting Authority was entitled to allow any candidate "to cure the defect" in his/her application.


11. But, learned Counsel for Respondent No.3 has contended before us that the Official Respondents were justified in allowing Respondent No.3 to produce the Auto CAD Certificate at a later stage since the said qualification being only a desirable one, its non-production along with the application was only a minor lapse. It is also contended by the learned counsel that the applicants cannot be heard to say that any discrimination had been shown by the Official Respondent in as much as all the



applicants whose name entered in the Check List had been given liberty to point out or carry out the defect. At the risk of repetition, we may point out that what was indicated in Annexure A3 notice was only that the candidates would be at liberty to point out mistakes in the entries in the data mentioned in the Check List. This would, in our view, refer to only such mistakes as might have occurred while tabulating the marks of the candidates in the list or indicating their caststatus, etc. In any view of the matter, we are unable to agree with Respondent No.3 that non-production of Auto CAD Certificate along with the application (even if it is only a desirable qualification) could not have been treated as fatal, especially since the said certificate has tilted the balance in favour of respondent no.3 in this case.

12. Learned Counsel for Respondent Nos. 1 & 2 submits that no special favour was shown to respondent no.3 by allowing him to produce the Auto CAD Certificate at a later stage. It was noticed by the Competent Authority that the said certificate was issued to Respondent No.3 way back in 2010, whereas the selection process was initiated only in 2013. Therefore, the Administration was of the view that it was not a bogus certificate or one which was procured later after initiation of the selection process.

13. Our attention has been invited to a decision rendered by a learned Single Judge of the Hon'ble High Court of Kerala in Manoj Kumar v. Kerala Public Service Commission; (1999) 2 KLT 534. In the said decision, the Kerala Public Service Commission had allowed about 300 and odd candidates to cure certain minor defects that had occurred while submitting the application forms seeking employment. The action of the Commission was challenged by a candidate who thought that he would get a better chance if the applications submitted by the other candidates were rejected as defective. Learned Single Judge after noticing that the Commission had not compromised on any major conditions like age, educational qualifications, experience, etc. was justified in



giving opportunity to more than 300 candidates to cure certain minor defects in their applications.

14. Thus, having regard to the fact that the Administration had made it clear in the Circular itself that applications which were not accompanied by attested copies of testimonials would be liable to be rejected, it was not proper on the part of respondent nos.1 & 2 to allow respondent no. 3 to produce Auto CAD Certificate at a later stage. In fact, if a strict view is taken, his application was liable to be rejected on that ground. In any view of the matter, placement of respondent no.3 at Sl.No.1 in Annexure A1 Select List cannot be held to be proper, legal or valid at all. Respondent Nos.1 & 2 are directed to recast Annexure A1 list of selectees in the light of the conclusions made above. A fresh select list shall be prepared and published on the basis of the merit of the candidates who had submitted valid applications.

15. The Original Applications are allowed.

No Costs


(K.GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE A.K.BASHEER)
JUDICIAL MEMBER

jm