

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : ERNAKULAM BENCH
AT ERNAKULAM

Original Application 297 of 2005
DATE OF ORDER : 20.10.2005

Between:-

Abdul Hakeem.P.
aged 29, S/o Shaik Koya,
House,
Kalpeni Island,
Lakshadweep

...Applicants

And

1. Union of India rep. by the Secretary, M/o Home Affairs
North Block, New Delhi.
2. The Administrator, U.T. of Lakshadweep, Kavaratti.
3. The Secretary (Shipping & Transport), U.T. of
Lakshadweep, Kavaratti.
4. Port Officer,
Union Territory of Lakshadweep, Kavaratti.

...Respondents

Counsel for the Applicants : Sri TOM.K.Thomas

Counsel for the Respondents : Sri Shafik. MA for R-2 to 4

CORAM:

THE HON'BLE SRI K.V.SACHIDANANDAN : MEMBER (J)

THE HON'BLE SRI N.RAMAKRISHNAN : MEMBER (A)

ORDER

(HON'BLE SRI N RAMAKRISHNAN: MEMBER(A))

1. In this OA, the applicant, Shri Abdul Hakeem seeks to secure appointment to the post of Tally Clerk under the Laccadives administration based on his performance in the relative tests.

2. Shri Abdul Hakeem responded to the A1 notification, inviting applications to the post of Tally Clerk. He attended the written test along with 40 others and, following the A2 invitation letter to the interview issued inter alia to 14 candidates, attended the same on 3.2.2004. In the merit list, one Shri Aneesurahman and the applicant were ranked the



first and second positions. The first ranker did not join duty. The applicant made representations staking his claim that the post should be offered to him. Subsequently, a second board was constituted which recommended his name. But according to the respondents, the recommendations were not acted upon on the ground that the board was constituted without the consent and approval of the appointing authority. The respondents issued the impugned notification A5 on 11.4.2005 inviting applications from candidates anew. Aggrieved by this notification, he has come up before this Tribunal.

3. He has sought the reliefs of a declaration that he is entitled to be appointed as Tally Clerk in the Port Department, Kavaratti and of a direction to give effect to the decision of the second selection Board which selected him as Tally clerk and appoint him as such forthwith.

4. He rests his case on the following grounds:

1. As the applicant was duly selected by the first Board and given second rank, the appointment should naturally be given to him on account of the failure of the first ranker in accepting the same.

2. The impugned notification for selection is illegal, as it did not cancel the previous selection list.

3. The list prepared by the Selection Board cannot be allowed to lapse in the face of existence of a clear vacancy based on the dicta laid down in the judgment the Apex Court in *2001 (4) SCC 289, 1999 (6) SCC 49*.

4. In any case, expiry of select list or panel's life cannot be a ground for refusing appointment to the selected candidates as laid down in *2004 (1)*



ATJ HC 244.

5. The impugned document is against the policy of the DOPT as enunciated in A-6 document.

5. The respondents counter the contentions of the applicant in the following points:

1.No panel of wait-listed candidates was recommended by the Board.

2.Appointments are made based on the **recommendations** of the Board and not on the **list prepared** by the Board. The applicant was not recommended for the post

3. The delay in appointment of the first ranker was caused by his having filed an OA for securing some other job and not due to any *malafides* on the part of the respondents.

4. The recommendations of the second board suffers from various infirmities like

.It has no approval by the Administrator.

.It is against the instructions of the Government of India vide R-4 (E) and R-4(F) and R-4 (G).

.The citations of the cases decided by the Apex Court as quoted by the applicant do not apply to this case; they relate to cases where a recommended panel exists.

6. We heard the learned counsels for the applicant and the respondents. We perused their pleadings and carefully gone through the file produced by the respondents relating the selection.

7. The points formulated for consideration are



- i) What is the present status of the applicant in terms of the recommendations of the Selections Boards?
- ii) What is the legal status of the recommendations and of the decision of the Administration on such recommendations?

8. As regards the first question what is the present status of the applicant in terms of the recommendations of the Selections Boards, it is seen that the Administrator is the appointing authority for the post of Tally clerk and he approves the setting up of the Selection Board and subsequently decides on the recommendations thereof. Nothing was brought to our notice regarding the powers vested in the Administrator regarding the approval to be given to the setting up of the Board. While setting up the first committee, no mandate has been seen to be given specifically. In fact, the contents of the recommendations of such Board were found to be varying from time to time. In the present case, the recommendation of the first selection committee was restricted to only the first ranker, apparently because the vacancy was only one. No wait-listed candidate was seen mentioned in the list proposed by the Board. This was in contrast to the proceedings of an identical board set up previous time for selection of two candidates against two vacancies of same post-one wait listed candidate was made as part of the recommendations. When the file was put up to the Administrator for the approval of the selection of the first ranker this time, no final decision was taken in view of the fact that he was apparently not interested in the selection. Consequently, no offer of appointment was ever made. As regards the second Board, neither the constitution nor the composition was approved by the Administrator. For this very reason, the recommendations nominating the applicant was not approved by the Administrator leading to the impugned re-notification of the vacancy. In short, the position emerges that the first board recommended only one person, the others were merely listed in order of



merit, the recommendations were not acted upon, much less accepted, the recommendations of the second board were rejected on account of lack of approval for its constitution and these preceding developments led to the impugned notification.

9. As regards the second question relating to the legal status of the recommendations and of the decision of the Administration on such recommendations, we may begin by examining the law laid down by the Apex Court in 1999 (6) SCC 49 and 2001 (4) SCC 289 and the ruling in 2004 (1) ATJ HC 244. In 1999 (6) SCC 49, the Apex Court held that a duly selected candidate could not be denied appointment on the pretext that the Panel's term has expired. In the present case, neither the applicant was selected, nor is there any panel and nor any validity period fixed therefor. In 2001 (4) SCC 289, the applicants therein were put in a panel of selected candidates and the panel had a validity period and they were denied employment on grounds of expiry of the same, which facts do not fit with those in this case. Lastly, in 2004 (1) ATJ HC 244, the Hon'ble High Court of Rajasthan had referred to the case 1999 (6) SCC 49 and ruled likewise and hence the same points relating to the inapplicability to the present applicant hold good here, too. It has been observed by the Hon'ble Apex Court in the case of Ludhiana Central Cooperative Bank Ltd Vs. Amrik Singh and others ²⁰⁰³ AIR SC 3103 that when the power to appoint is vested in one authority, and the constitution of a committee is for the selection of candidates by tests etc, the said committee cannot finalize the same without the approval of the appointing authority and, even otherwise, it is well settled by now that a person whose name is said to find place in a select panel has no vested right to get appointed to the posts in spite of vacancies existing. Here, too, the Administrator being the appointing authority, and the selection Board constituted to assist him, the Board has no superior power than the Administrator, whose decisions are final.

10. As relating to the extant instructions, the applicant relies on the A-6 document



which is an O.M of the DOPT, Government of India to plead that a person already on the list of selected candidate awaiting appointment shall be accommodated before heading for fresh recruitment and there is no time limit/validity for the panel of selected candidates. A perusal of Annexure A-6 document shows that it is laid down therein that recruitment should take place only when there are no candidates available, from an earlier list of selected candidates and no further recruitment to take place till the available selected candidates are exhausted. Again, once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change, after his name has been included in the list of selected candidates. It may be noted in this case that the selection board selected only the first ranker Shri Aneesurrahman, others including the applicant merely **listed and not selected**. The respondents brought to our notice Annexure R-4 issued by the Administrator in which it has been laid down that the select list of candidates should be prepared to the extent of number of vacancies notified to the Employment Exchange. Preparation of a reserve list was left to the option of the Selection Board. It is relevant to note that the file reveals that during the selections held in the year 1999 for the same post, a reserve list was prepared of one candidate along with the list of two selected candidates. In the present list, the applicant has not been included even in a wait list. In view of the accent placed on selected candidates to be accommodated first in the extant instructions and of the applicant not being given the status of a selected candidate, he has no vested right of consideration as a default candidate. In view of the ratio given in the judgment of the Apex Court in Ludhiana Central Cooperative Bank Ltd vs Amrik Singh and others AIR SC 3103 referred to above, the appointing authority, the Administrator in this case has a final say in the matter of recommendation of the selection committee. Since he has

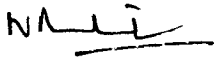



turned down the recommendations of the second board, that decision prevails. According to the decisions in the *ibid* cases, there is no vested right available even in respect of select list candidates for appointment. The applicant in this case, enjoys a status only of listed and not select listed candidate.

11. Actually, the reliance of the applicant on the extant instructions of the DOPT may not work to his advantage. If an earlier panel has to be operative till the selected candidates therein are exhausted, then the wait-listed candidate of 1999 has a better status than the applicant who is just a listed candidate and not a select-listed candidate

12. In short, the applicant is a listed and not a select-listed candidate, the benefits of the rulings of the Apex court and of the instructions of the DOPT are applicable to only selected candidates.

13. In view of the above, the applicant does not succeed. The OA is dismissed and no costs.


(N.RAMAKRISHNAN)
Member (A)


(K.V.SACHIDANANDAN)
Member(J)

Dated: 20th October, 2005.

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