

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 305 of 2010

Thursday, this the 23rd day of September, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

Ajmal Khan V., Aged 24 years, S/o. V.T. Nallakoya,
 Valiya Illam House, Agathi Island, Union Territory of
 Lakshadweep.

Applicant

(By Advocate – Mr. C. Khalid)

V e r s u s

1. The Administrator, Union Territory of Lakshadweep, Kavarathi.
2. The Superintendent of Police, Union Territory Lakshadweep, Kavarathi.
3. Ameer Bin Mohammed C.N., S/o. Pockutty Mohammed Koya, Baithul Ameer (H), Kavarathi Island.
4. K. Shouk, S/o. Bamban, Kunchadam House, Kavarathi Island.
5. Mohammed Khaleel. P., S/o. Ahammed P.C., Thiruvathapura (H), Agathi Island.
6. Manzoor B.P., S/o. Sulaiman A.K., Balipura (H), Kadmath Island.

Respondents

[By Advocate – Ms. Deepthi Rose J. for Mr. S. Radhakrishnan (R1&2), Mr. Arunraj S. (R3, 4 & 5) and Mr. Reji for Mr. M.V. Thamban (R6)]

This application having been heard on 23.9.2010, the Tribunal on the same day delivered the following:

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ORDER

By Hon'ble Mr. Justice K. Thankappan, Judicial Member -

The applicant filed this Original Application challenging the Annexure A-2 select list and prayed to quash the same and also for a direction to revise the impugned select list.

2. The facts in this case are as follows:-

a) The first and second respondents of Lakshadweep Administration invited applications for selection to the post of Sub Inspector of Police as per the notification dated 21.5.2008. The eligibility for participation in the selection has also been published by the Department as per Annexure R1(a) in which it is stated that apart from the educational qualification the candidate should have their physical endurance standard/test by participating in 1. Race 1600 Mtrs. in 6.5 minutes, 2. Long Jump 13 feet in 3 chances, 3. Chin up 4, 4. Short put 7.25 Kgs-5.60 Mtrs. & 5. Basic Swimming. The applicant appeared for the test. However, though he had passed all other physical endurance standard/test, he could not complete the distance of 100 mtrs. swimming within the time limit of two minutes and hence his name was not included in the select list prepared by the official respondents. Under the above circumstances the applicant filed this Original Application.

3. The Original Application has been admitted and notices have been ordered to the respondents. In pursuance to the notices issued from this Tribunal the respondents 1 and 2 have filed their reply statement. The party respondents namely the R3 to 6 were also represented by their respective

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counsel and they have also filed their reply statements in the application.

4. On completion of the pleadings the Original Application is posted for hearing and we have heard the learned counsel for the applicant Mr. C. Khalid and the counsel appearing for the 1st and 2nd respondents Mr. S. Radhakrishnan represented by Ms. Deepthi Rose J. and also the counsel appearing for the respondents 3 to 5 Mr. Arunraj S. and respondent No. 6 by Mr. M.V. Thamban represented by Mr. Reji. The main ground urged by the learned counsel appearing for the applicant is that since the notification issued for the selection, the guidelines and as per the selection method notified vide Annexure R-1(a) dated 13.1.2009 would only show that candidates who are appearing for the test shall undergo the following test namely 1. Race 1600 Mtrs. in 6.5 minutes, 2. Long Jump 13 feet in 3 chances, 3. Chin up 4, 4. Short put 7.25 Kgs-5.60 Mtrs. & 5. Basic Swimming. As per this notification it does not fix any time limit or distance to be covered within the time fixed for swimming. The procedure now adopted by the official respondents to disqualify the applicant cannot be sustained and hence the selection made by the Department avoiding the applicant from the select list is irregular and illegal. The counsel further relied on Annexure A-4 notification which was issued by the same Department for the selection to the post of Sub Inspector under the Costal Security in Lakshadweep Police Department and it would also show that the candidates should know only the basic swimming. As the notification is not fixing any time limit or any distance to be covered and as even if the applicant could not cover the distance in a fixed time the same cannot be

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considered as a dis-qualification for inclusion of the applicant's name in the select list.

5. To the above contention the counsel appearing for the first and second respondents relying on the reply statement submits that as per the notification to have the knowledge of basic swimming is fixed as a qualification for selection and at the time of conducting the selection it was declared before the candidates that they should cover 100 mtrs. by swimming within a time limit of two minutes and that was not objected by any of the candidates including the applicant. All other candidates completed that distance within the specified time whereas the applicant could not complete the distance within the specified time. Hence, he was found disqualified. Though the applicant objected it was ordered by the respondents to sign the paper showing the conduct of the test and accordingly the applicant signed the paper and it would show that the applicant was aware that he was disqualified. Therefore, the present stand now taken by the applicant is not sustainable. The further contention of the counsel appearing for the 1st and 2nd respondents is that though the applicant was found disqualified as he has not covered the distance of 100 mtrs. within the time stipulated the result was informed to him that he is disqualified, but remained silent till 17.3.2010 i.e. the issuance of the select list. Hence, the delay in taking such a stand is not detrimental to the applicant.

6. The counsel appearing for the party respondents Nos. 3 to 6 also relied

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on their different reply statements and contends that as the applicant was silent about the disqualification and he has waited for more than one year, at this distance of time he cannot come before this Tribunal to complain that the select list has to be quashed. Further the counsel for the party respondents submitted that knowing basic swimming is fixed as a qualification and it can be checked only by insisting the candidate to swim a particular distance fixed by the Department or the officials who conducted the test. Otherwise the efficiency in swimming cannot be judged. If so, the fixation of swimming a distance of 100 mtrs. within two minutes is valid and once the disqualification is declared the applicant cannot claim any benefit out of the notification, as now he prayed in this Original Application.

7. We have anxiously considered the contentions raised by the respective parties and we have also considered the documents produced before us. Annexure R1(a) notification stipulates the method of measuring physical endurance and items which the candidates has to undergo and as per this notification apart from the educational qualifications the candidate should have to undergo the following physical endurance test namely 1. Race 1600 Mtrs. in 6.5 minutes, 2. Long Jump 13 feet in 3 chances, 3. Chin up 4, 4. Short put 7.25 Kgs-5.60 Mtrs. & 5. Basic Swimming. The reading of this would show that there was no time limit or coverage of any distance for swimming. Legally, we can see that as far as Annexure R1(a) is concerned it can be considered only for the basic swimming and the respondents 1 & 2



and the contesting respondents have no case that the applicant is not knowing the basic swimming but at the same time the respondent No. 6 has got a case that he drowned in the water when the swimming test was conducted. However, there is no evidence before us to hold that contention as correct and as such the official respondents 1 & 2 have also no such case before us. Hence, as the notification does not contain any time limit for covering any particular distance by swimming, the knowing of the basic knowledge of swimming is enough for passing the test of swimming. For example if any test prescribes for knowing running it shall not be insisted that a distance of 5 Kms. should be completed by running a candidate within a fixed time. In that case we can only insist of knowledge of how to run. If so the basic principle behind Annexure R1(a) is the basic knowledge of how to swim. Even if there is a contention regarding the delay, we have already noted that the select list came into existence only on 17.3.2010. Hence, there is no wilful delay on the part of the applicant in approaching this Tribunal.

8. In the above circumstances we are of the view that non-inclusion of the name of the applicant in the select list is irregular and not correct. Apart from that we have already noted that in all other physical endurance test the applicant has completed and passed. If so the name of the applicant has to be included in the select list and appropriate orders should be passed on this aspect within 45 days from the date of receipt of a copy of this order. We order accordingly.

A handwritten signature consisting of a stylized letter 'S' with a horizontal line extending to the right.

9. In view of the aforesaid, the Original Application is allowed to the extent indicated above. No order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

“SA”