

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Original Application No. 304 of 2011
with
O.A. Nos. 314/2011, 363/2011 and 384/2011**

FRIDAY, this the 23rd day of December, 2011

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. O.A. No. 304/2011

Silsad Khan A.P
S/o. Seethikoya A
Adiyattimmeppura House
Kavaratti, Lakshadweep – 682 555.

- Applicant

(By Advocate Mr. Arun Raj S.)

Versus

1. The Administrator
Union Territory of Lakshadweep
Kavaratti – 682 555.
2. The Secretary (Power)
Department of Electricity
Administration of Union
Territory of Lakshadweep
Kavaratti – 682 555.
3. The Executive Engineer (Ele)
Department of Electricity
Administration of Union
Territory of Lakshadweep
Kavaratti – 682 555.
4. Mohammed Hashim A.C
Ayshechetta, Kadamat – 682 556.
5. Mohammad Ali K.O
Kakkachiyoda House
Kalpeni – 682 557.
6. Hakeem K.P
Kattupura, Androth – 682 551.

7. Jamaludheen P.K
Puthiyathakkal, Kilthan – 682 558.
8. Abdul Huraishi K.C
Kathathe Chetta, Kadamat – 682 556.
9. Mohammed Navas M.P
Mattum Poopura, Kadamat - 682 556.
10. Badarudheen C.N
Cheriyanallal House,
Kadamat – 682 556
11. Jaffer Sadik M.I
Meppada Illam, Agatti – 682 553.
12. Niyazkhan A.C
Ayshechetta, Kadamat – 682 551.
13. Mohammed Saleem M
Makket, Androth – 682 551.
14. Mohammed Kasim K.K
Kerakkada, Androth – 682 556.
15. Shanavas Khan P.P
Purakkatta Poomi, Amini
16. Ajmal Khan M
Madhil House, Androth – 682 551.
17. Mohammed Jaffer K.K
Kerakkada, Androth – 682 551.
18. Abdul Raheem K.
Kuttilammada, Agatti – 682 553.
19. Zaheerudheen T.P
Thattampokkada,
Androth – 682 551.
20. Salahudheen M.I
Melaillam, Kadamt – 682 556.
21. Mohammed Rafeek P
Pallam House,
Kadamat – 682 556.
22. Nisarudheen C
Chekkithiyoda, Chetlat – 682 554.

23. Abdu Rahiman U.P
Ummayya Pura, Chetlat – 682 554.
24. Jaleel P.V
Puthiyaveedu, Kiltan – 682 558.
25. Mohammed Latheef C.K
Chakkarakkada, Androth – 682 551.
26. Mohammed Shah S.M
Shaj Mahal, Kalpeni – 682 557.

- Respondents

(By Advocate Mr. S. Radhakrishnan for R1-3)
(By Advocate Mr. Manzoor Ali. K.A for R4&6)

2. O.A No. 314/2011

1. Anwar Sadath A.K
S/o. Kunhikoya C.N
Akkara House, Kalpeni Island
Lakshadweep.
2. Mohammed Hussain K.I
S/o. P.P. Abbas, Kallillam House
Bitra Island – 682 555.

- Applicants

(By Advocate Mr. Arun Raj S.)

Versus

1. The Administrator
Union Territory of Lakshadweep
Kavaratti – 682 555.
2. The Executive Engineer (Ele)
Department of Electricity
Administration of Union
Territory of Lakshadweep
Kavaratti – 682 555.
3. Mohammed Hashim A.C
Ayshechetta, Kadamat – 682 556.
4. Mohammad Ali K.O
Kakkachiyoda House
Kalpeni – 682 557.
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Kattupura, Androth – 682 551.

4

6. Jamaludheen P.K
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20. Mohammed Rafeek P
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21. Nisarudheen C
Chekkithiyoda, Chelat – 682 554.

22. Abdu Rahiman U.P
Ummayya Pura, Chetlat – 682 554.

23. Jaleel P.V
Puthiyaveedu, Kiltan – 682 558.

24. Mohammed Latheef C.K
Chakkarakkada, Androth – 682 551.

25. Mohammed Shah S.M
Shaj Mahal, Kalpeni – 682 557.

Respondents

(By Advocate Mr. S. Radhakrishnan for R1&2)
(By Advocate Mr. Manzoor Ali. K.A for R3&5)

3. O.A. No. 363/2011

1. Ibrahim M.I, S/o. Rasheed Koya
Residing at Melillam,
Union Territory of Lakshadweep,
Kiltan – 682 558.

2. Ibrathulla T.K, S/o. Ahmmmed K
Residing at Tenakkal House
Union Territory of Lakshadweep
Kilthan – 682 558.

Applicants

(By Advocate Mr. N. Unnikrishnan)

Versus

1. Union of India represented by
The Secretary to the Govt. of India,
Ministry of Personnel and Public Grievances
Department of Personnel and Training
New Delhi – 110 001.

2. The Administrator
Union Territory of Lakshadweep
Kavaratti – 682 555.

3. The Executive Engineer (Electrical)
Union Territory of Lakshadweep
Department of Electricity Administration
of Union Territory of Lakshadweep
Kavaratti – 682 555.

4. The Secretary (Power)
Department of Electricity
Administration of Union
Territory of Lakshadweep
Kavaratti – 682 555.

5. Mohammed Hashim A.C
Ayshechetta, Kadamat – 682 556.

6. Mohammad Ali K.O
Kakkachiyoda House
Kalpeni – 682 557.

7. Hakeem K.P
Kattupura, Androth – 682 551.

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Puthiyathakkal, Kilthan – 682 558.

9. Abdul Huraishi K.C
Kathathe Chetta,
Kadamat – 682 556.

10. Mohammed Navas M.P
Mattum Poopura, Kadamat - 682 556.

11. Badarudheen C.N
Cheriyamnallal House,
Kadamat – 682 556

12. Jaffer Sadik M.
Meppada Illam, Agatti – 682 553.

13. Niyazkhan A.C
Ayshechetta, Kadamat – 682 551.

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Thattampokkada, Androth – 682 551.
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Chekkithiyoda, Chetlat – 682 554.
24. Abdu Rahiman U.P
Ummayya Pura, Chetlat – 682 554.
25. Mohammed Shah S.M
Shaj Mahal, Kalpeni – 682 557.
26. Shihavudheen A.K
Adiyamkutti, Musliyarakam
Agatti – 682 553.
27. Saifulla C.K., Chakkarakkada
Androth – 682 551.
28. Mohammed Sali P.K
Purathakkad House
Kavaratti – 682 555.

- Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC for R1)
 (By Advocate Mr. S. Radhakrishnan for R2-4)
 (By Advocate Mr. Manzoor Ali K A for R5&7)

4. O.A. No. 384/2011

1. Faizer Hussain K.P
S/o. Mohammed P.P
Residing at Kannipura House
Union Territory of Lakshadweep
Kilthan – 682 558.
2. Akbar Ali. P.K, S/o. Aboosala
Residing at Puthiyathakal
Union Territory of Lakshadweep

- Applicants

(By Advocate Mr. N. Unnikrishnan)

Versus

1. Union of India represented by
The Secretary to the Govt. of India,
Ministry of Personnel and Public Grievances
Department of Personnel and Training
New Delhi – 110 001.
2. The Administrator
Union Territory of Lakshadweep
Kavaratti – 682 555.
3. The Executive Engineer (Electrical)
Union Territory of Lakshadweep
Department of Electricity
Administration of Union
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Kavaratti – 682 555.
4. The Secretary (Power)
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Ummaya Pura, Chetlat – 682 554.

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Shaj Mahal, Kalpeni – 682 557.

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Adiyamkutti, Musliyarakam
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27. Saifulla C.K., Chakkarakkada
Androth – 682 551.

28. Mohammed Sali P.K
Purathakkad House, Kavaratti – 682 555. - Respondents

(By Advocate Mr. S. Radhakrishnan for R2-4)
(By Advocate Mr. Manzoor Ali K A for R5&7)

These applications having been heard on 05.12.2011, the Tribunal on 23.12.11.... delivered the following:

ORDER

Hon'ble Mr. K. George Joseph, Administrative Member -

Having common facts and issues, these O.As were heard together and are disposed of by this common order.

2. The Lakshadweep Administration by Annexure A-1 notification dated 24.10.2010 had invited applications for appointment for the post of Engine Driver/Lineman/Helper for Lineman/Mazdoor and similar grades on regular basis from the qualified local candidates of the Lakshadweep Islands. The qualifications required for appointment to the above posts as per the Recruitment Rules are given below:

"Essential:

1. SSLC Pass.
2. I.T.I National Trade Certificate either in Electrician/Wireman (2 year Course) or Mechanic Diesel (one year course).
3. Experience for minimum period of three years for Electrician/Wireman and 4 years for Mechanic Diesel under Central Government / State Government / Government Undertakings (Experience certificate in the above fields after passing the above trade only will be considered).

Desirable:

Preference will be given to those who have satisfactorily completed apprenticeship training in Lakshadweep Electricity Department."

2. The candidates selected as per Notice dated 01.04.2011 as at Annexure A-12 in preference to the applicants have not qualified and, therefore, the select list is not sustainable in the eyes of law as per the say of the applicants. Aggrieved, they have filed these O.As seeking the reliefs of setting aside the impugned select list and for a direction to the respondents No. 1 to 4 to conduct fresh selection to the posts notified in Annexure A-1 and to make appointment in accordance with law.

3. The applicants submitted that the essential qualifications prescribed for the posts are SSLC Pass, I.T.I National Trade Certificate either in Electrician/ Wireman (2 year Course) or Mechanic Diesel (one year course). Therefore, the diploma holders cannot be considered for the above posts as they are over qualified. Diploma is an essential qualification for higher post of Junior Engineer (Electrical) and Construction Foreman / Chargeman (Power House) / Chargeman (Line)/ Meter Mechanic / Cable Jointer / Mechanic / Electrician (Interchangeable). Therefore, a diploma holder should not be considered and appointed against the lowest rung of the posts , like Engine Driver / Lineman / HLM / Oilman / Mazdoor. Some of the party respondents have no experience at all as against the requirement of 3 or 4 years experience, as the case may be. Some other party respondents have a little experience, but the applicants have longer experience than them. Therefore, they are better qualified than the party respondents for selection and appointment to the notified posts. The respondents cannot go beyond Annexure A-1 notification and Annexure A-13 Recruitment Rules. They have completely overlooked the essential qualification of experience.

4. The respondents in their reply statement admitted that in the Annexure A-1 notification it was mentioned that 3 years experience for Electrician/Wireman and 4 years for Mechanic (Diesel) as one of the essential qualifications. As the required number of qualified candidates did not possess the experience as per the notification, the Administrator, the competent authority, approved the relaxation of the qualification of experience as a one time measure and approved the selection of the candidates based on their academic merits alone ignoring experience. While considering the applicants for selection based on academic merits, it was found that they did not possess higher percentage of marks than the 23 selected candidates. No candidate was selected considering his experience. The candidates were selected according to their academic merit. This Tribunal in O.A. No. 621/2008 alongwith O.A. No. 17/2009 and 683/2008 had observed that the word 'Essential' denotes the barest minimum educational qualification. It does not rule out higher qualification in the same field. In JT 2002 (Suppl.1) SC 85, *Jyothi K.K. and Others vs. Kerala Public Service Commission*, it was held that if a person has acquired higher qualification in the same faculty, such qualification can certainly be stated to presuppose the acquisition of lower qualifications prescribed for the post. There was shortage of workmen for the operation and maintenance of Power House, Transmission and Distribution lines. Therefore, filling up of 23 vacancies was the need of the hour for uninterrupted round the clock power supply in the entire Lakshadweep. They have acted in a just and fair manner in the selection of the eligible candidates to provide certain essential service for the people.

5. In the rejoinder, the applicants submitted that the respondents could

have modified the condition by relaxing the years of experience instead of dispensing with it totally. The Administrator has relaxed the condition of experience after making selection on the basis of the marks obtained in the SSLC and ITI. The relaxation ought to have been invoked and published before the selection was made. A selection made against the conditions prescribed in the notification needs to be quashed. The question is not the power of the Administrator to invoke relaxation but is that by such power can he violate the notification. The Hon'ble Supreme Court in *K. Manjusree vs. State of A.P.*, (2008) 3 SC 512, held that the selection criterion has to be prescribed in advance and rules of game cannot be changed afterwards.

6. We have heard learned counsel for the respective parties and perused the records.

7. As per the Recruitment Rules, the Diploma is not an essential qualification for appointment to the post of Engine Driver/Lineman/Helper for Lineman/Mazdoor (inter changeable). It is higher qualification than SSLC and ITI. It is a prescribed qualification for the post of Junior Engineer (Electrical) and Construction Foreman / Chargeman (Power House) / Chargeman (Line) / Meter Mechanic / Cable Jointer / Mechanic / Electrician (Interchangeable), which are higher posts. The first question that arises for our consideration is that whether over-qualification can be a disqualification. The term 'Essential' does not rule out higher qualification in the same field. As held in JT 2002 (Suppl.) SC 85, *Jyothi K.K. and Others vs. Kerala Public Service Commission*, "if a person has acquired higher qualification in the same faculty,

such qualification can certainly be stated to presuppose the acquisition of lower qualifications prescribed for the post". Therefore, we hold that higher qualification per se cannot be treated as a disqualification for competing for a post with lesser educational qualification in the same line. However, in Writ Petition (C) Nos. 497 and 7679 of 2010, the Hon'ble High Court of Kerala observed that "They have obtained their Diplomas in Electrical and Electronics Engineering and Mechanical Engineering. The ITI Certificate prescribed for the post of Oilman/Mazdoor is in Electrician and Wireman or Mechanic Diesel. Obviously therefore, a Diploma holder in Electrical and Electronics Engineering cannot be treated on par with an ITI Certificate holder in Wireman and Electrician course." There is nothing on record in the instant cases to show that the Diploma in question and I.T.I, National Trade Certificate either in Electrician/ Wireman or Mechanic Diesel are in the same line of study or not. Prescription of Diploma as an essential qualification for higher post per se does not invalidate its being considered though not prescribed in the Recruitment Rules for lower post, if it is in the same line as the lower qualification prescribed for the lower post. Therefore, on this count, we do not think interference by this Tribunal is warranted. Even so, we would observe that it would have been better had the Recruitment Rules, in the interest of transparency and clarity, either included or excluded higher qualification for the post of Engine Driver/ Lineman/Helper for Lineman/ Mazdoor etc.

8. The crucial issue for determination in these O.As is whether the power of the Administrator to relax any of the provisions except Rule 4 of the

Lakshadweep Electricity Department (Group 'B' and 'C' Technical Posts, Non Gazetted) Recruitment Rules, 2009, has been exercised properly and legally. It is seen that the Administrator, Lakshadweep Administration, has relaxed the qualification of experience to the extent of discarding it altogether on the recommendation of the Selection Committee. The power of relaxation of course, includes partial or total relaxation. Total relaxation of the requirement of experience of 3 or 4 years is justifiable in a situation when no candidate is having any experience at all. When a candidate having some experience, though not fully, is available, he has to be preferred over a candidate having no experience at all. In the instant cases, some candidates like the applicants have more experience than those who have been selected. It is not clear whether this aspect was brought to the attention of the Administrator to enable him to take a right and proper decision in the matter. Dispensing with experience totally when persons with some experience were available, was not justifiable and not in keeping with the job requirement as per the Recruitment Rules. Power of relaxation should have been exercised to relax the condition of experience only to the extent warranted by the circumstances in these cases. Therefore, we do not find dispensing with experience totally proper or legal.

9. More importantly, the power of relaxation should not be exercised at any point of time in a selective manner. The benefit of relaxation should be available to all the candidates so as to afford equal opportunity to compete for appointment in Government or quasi-Government organizations. The competent authority should have relaxed any of the conditions before the process of selection was initiated. Once the process of selection started, the

16

sanctity of the process of selection should not be violated by introducing relaxation. The rules of game should not be changed after the game has been played. In *Marathashtra State Road Transport Corporation vs. Rajendra Bhimrao Mandve*, (2001) 10 SCC 51, the Apex Court observed that the rules of the game meaning thereby that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. In the instant cases, the relaxation of experience was granted after the candidates for selection were identified by the Selection Committee. Thus the relaxation granted smacks of arbitrariness and discrimination. It is, therefore, illegal though done in good faith. The right course of action for the respondents was to cancel the recruitment process for want of eligible candidates for appointment as per the Recruitment Rules and to start a fresh process of selection with relaxation of qualification to the extent as deemed necessary by the competent authority. It was also open to the respondents to indicate in the notification that relaxation in experience will be granted if warranted by the situation at the discretion of the competent authority. This would have enabled all those who do not have the required experience to participate in the process of selection, if so desired. Thus, in our considered view, the exercise of power of relaxation of experience in the instant cases is vitiated on two counts - (i) it was resorted to when the process of selection was over and (ii) the requirement of experience was totally discarded, which was not warranted in the circumstances of these cases. Therefore, these O.A.s succeed.

10. The respondents were under certain constraints as explained in the reply statement. There was shortage of workmen for operation and

maintenance of Power House, Transmission and Distribution lines. Therefore, filling up of 23 vacancies was the need of the hour for uninterrupted power supply in the entire Lakshadweep. True, the governance required providing essential service of the power supply for the people at a given time. But when it is done by the Government, it should be done in a fair, just and legal manner. The respondents could have temporarily appointed on ad hoc basis the required number of persons as a stop gap arrangement till regular hands are available.

9. In the light of the above discussion, we declare that the selection and appointment as per Annexure A-12 select list is unsustainable in the eyes of law. Annexure A-12 select list is hereby set aside. However, those who were appointed may continue provisionally till regular recruits arrive to replace them. The respondents are directed to make fresh selection to the posts notified in Annexure A-1 and make appointment in accordance with law as early as possible. The respondents can make relaxation of condition of eligibility as deemed fit by them in a legally sustainable manner.

10. The O.As are allowed to the extent indicated above with no order as to costs.

(Dated, the 23rd December 2011)

K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.