

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A NO. 339/2003**

**TUESDAY, THIS THE 21st DAY OF MARCH, 2006**

**C O R A M**

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Mohammed K.B. S/o K.B. Hassan  
Kunnimathige Badarige  
Pallissery Vilage, Minicoy Island  
UT of Lakshadweep.

**Applicant**

By Advocate Mr. N. Nagaresh

**Vs.**

- 1 Union of India represented by  
the Administrator,  
UT of Lakshadweep  
Kavaratti.
- 2 The Ssecretary (Press)  
UT of Lakkshadweep  
Kavaratti.
- 3 Sri Pukhraj Bamb  
The Secretary (Press)  
UT of Lakshadweep,  
Kavaratti.
- 4 TheManager  
Government of India Press  
UT of Lakshadweep.

**Respondnets**

By Advocate MR.S. Radhakrishnan for R 1- 4

**ORDER**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

This OA has been filed by the applicant aggrieved by the  
cancellation of the selection conducted on 1.2.2003 for the post of Copy

Editor in the Government Press, Lakshadweep. The applicant had appeared in the trade test and interview conducted for the post. He seeks the following reliefs:

(i) To call for the records relating to Annexure A-1 to A-5 and to quash Annexure A-1 being illegal and arbitrary

(ii) To declare that the applicant is entitled to be posted as Copy Editor, under the IV<sup>th</sup> respondent consequent to his selection in the interview/trade test conducted on 1.2.2003 immediately

(iii) To direct the respondents to appoint the applicant as Copy Editor under the IV<sup>th</sup> respondent immediately.

(iv) To issue such other appropriate orders or directions this Hon'ble Court may deem fit just and proper in the circumstances of the cases

(v) To grant the costs of this Original Application.

2 The facts of the case are that a vacancy of Copy Editor was notified by an advertisement in the Lakshadweep Times on 6.6.2002 and the applicant responded to the same. All the candidates were invited for interview by the 4<sup>th</sup> respondent and the applicant also participated in the written test and the interview conducted on 1.2.2003. However, no select list was published nor any appointment made. The applicant claims that he had fared well in the written test and interview and it is reliably understood that he was ranked first in the select list and the same has gone for Administrator's approval. However, by Annexure A-1 order the selection was cancelled and a fresh selection was ordered without stating any reason at all. The applicant has preferred Annexure A-6 representation against the cancellation of the select list to the first respondent on 6.4.2003 but no action has been taken on the representation. The applicant has lost his seniority and also registration in the Employment Exchange and is not

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being invited for any other interview also. The Government of India has lifted the ban imposed on appointment in view of financial stringencies and appointments have taken place in many other posts in the Islands and it is averred that the action of the respondents in cancelling the earlier selection and not even giving reply to the representation of the applicant is arbitrary and violative of the principles of equity and natural justice.

3 The respondents 1 & 2 and the 3<sup>rd</sup> respondent have filed separate reply statements.

4 In the reply statement filed by the 3<sup>rd</sup> respondent it is admitted that the post of Copy Editor was notified and action was taken to convene a trade test and interview. According to him the trade test and interview held had to be cancelled since a legal lacuna was noticed in the composition of the Members of the Board which conducted the trade test. The composition of the Board has been approved by the Administrator vide Gazette Notification dated 29.8.1993 and it is still valid. But the 4<sup>th</sup> respondent has brought about some changes in the constitution of the Board without getting the approval of the Administrator and observing this legal lacuna in the constitution of the Board, the Administrator has ordered cancellation of the process and started selection process afresh with the original constitution of the Board. The applicant has no right for selection which was made by the unauthorized Board. The Administrator being the competent authority, has ordered fresh selection by the duly constituted Board which is perfectly legal.

5 The applicant has filed a rejoinder in which he has contended that the reply of the respondents is made with a malafide intention to cover up

the illegal acts committed by the third respondent. The Administrator has delegated powers to the subordinate officers and accordingly the Secretary, Press shall be the appointing authority for all Group-C and D Technical Posts in Government Press and he is competent to make appointments as per the Recruitment Rules of the respective posts framed and approved by the Administrator himself under Article 309 of the Constitution and notified in the official Gazette. The composition of the existing Board dated 28.9.1993 was reconstituted by the Secretary, Government Press as per Government order No. 1/7/95-LGP dated 25.4.98 as one officer had retired from service during 1998 and in his place the Director of Social Welfare was inducted. The said proposal was submitted to the Administrator but it was learnt that the Administrator has not approved the change. As the changes have been approved by the third respondent acting under the delegated powers of the Administrator there is no lacuna as alleged by the respondents.

6 The respondents 1 & 2 have filed reply statement stating that under Article 239 of the Constitution read with proviso to Article 309, the Administrator alone is competent to exercise the power of constitution of a Board and when the proposal for reconstitution of the Board was rejected by the Administrator, the fourth respondent has no authority to go ahead with the Trade Test on 1.2.2003. The purported notification dated 22.4.1998 is legally not valid. The Assistant Engineer (Shipping) who was a Member of the duly constituted Board was included as such in the capacity of a Technical Officer and the amended notification for inducting Director of Social Welfare as Member was acted upon by

misrepresentation of the factual situation by the 4<sup>th</sup> respondent to the 3<sup>rd</sup> respondent.

7 We have heard the learned counsel for both sides. The learned counsel for the applicant submitted that similar cases were considered by this Tribunal in O.A. 787/2002 and connected cases wherein the selection was done by the illegally constituted Committees. The Writ Petition No. WP(C) No. 19096 of 2005 filed before the Hon'ble High Court of Kerala against the order of the Tribunal was disposed of directing the respondents to look into the matter sympathetically and take appropriate action thereon in accordance with law and justice with the observation that the orders of the Tribunal would not stand in the way of consideration of the request of the applicants therein by the Administration. The counsel for the respondents has contended that these orders are distinguishable and not applicable in the present case.

8 We have perused the records and judgments referred to above. To determine the legality of the cancellation the respondents were directed to produce the relevant file relating to the selection which was produced. From the noting in the said file it is clear that the power of notifying the composition of the Trade Testing Board rested with the Administrator and there has been no delegation of this power to any subordinate officer. The purported notification dated 29.8.98 was not even published in the Gazette. It is seen that the proposal to amend the constitution of the Board was submitted to the Administrator but it was not approved. The action of the third respondent in holding the trade test by a Board which was not

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duly constituted was irregular and the subsequent action of the Administrator in cancelling the selection by an unauthorised Board cannot be held to be arbitrary or violative of principles of equity and natural justice.

9 Apart from the above legal lacuna regarding the composition of the Board we are of the view that the applicant has no legal right to be appointed on the ground that he had passed the examination. In fact the process of selection had not been completed and no select list had been prepared. The Hon'ble Supreme Court in Sankarsan Dash Vs. Union of India (AIR 1991 SC 1612) has held that even inclusion of a candidate in the merit list does not confer any right to be selected. In the instant case no merit list even has been prepared or produced before us. The direction of the Hon'ble High Court in W.P.19096/2005 is in a totally different context and the factual position in those cases is different in material facts as the appointments in those cases were not given effect to due to ban orders of the Government of India regarding filling up of posts lying vacant. The question under consideration in this case is entirely different and relates to illegality of selection process. We do not find any merit in the O.A. Accordingly, it is dismissed. No costs.

Dated 21.3.2006.

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

  
**SATHI NAIR**  
**VICE CHAIRMAN**

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