

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.355/05

THURSDAY this the ...7th..... day of ..DECEMBER..... 2006

C O R A M :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.K.B.S.RAJAN, JUDICIAL MEMBER**

S.V.Mohammed Basheer,
S/o.Hassan, Sheikana Veedu,
Kavarathi, U.T of Lakshadweep.Applicant

(By Advocate Mr.K.K.Mohammed Ravuf)

Versus

1. Union Territory of Lakshadweep
represented by Administrator, Kavarathi.
2. Director,
Social Justice Empowerment & Culture,
Kavarathi, U.T of Lakshadweep.Respondents

(By Advocate Mr.Shafik M.A.)

This application having been heard on 8th November 2006 the
Tribunal on7.12.2006..... 2006 delivered the following :-

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

This application has been filed against the cancellation of the
notification dated 3.12.2004 for the post of Library Information Assistant
under the Lakshadweep Administration and re-notifying the same post
inviting fresh applications. The facts of the case are as under ;>

2. A vacancy of Library Information Assistant was notified in the Employment Exchange and in the Lakshadweep Times (Annexure A-1). Pursuant to the notification four persons including the applicant applied for the post. Since one of the persons applied was found not qualified, the

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other three persons including the applicant were called for the interview on 13.1.2005. A list showing the marks obtained by the three candidates at Annexure A-2 has been produced in which the applicant's name figures at Serial No.1. While so, the 2nd respondent has again invited applications for fresh selection vide Annexure A-3 dated 4.5.2005 cancelling the earlier notification.

3. According to the applicant, he is a graduate and passed Bachelor Degree in Library Science and is fully qualified. The respondents had called for similar applications on 20.1.2004 also and the applicant had applied to the post as well. The applicant was the only qualified person. However, the interview was not conducted nor the selection completed and without assigning any reason the said notification was cancelled.

4. It is alleged that the respondents action in again cancelling the selection process is without any basis and indicative of malafides to see that candidates of their choice are selected. It is further submitted that once a person is declared successful, the appointing authority has the responsibility to appoint him. Thus in view of Annexure A-2 mark list no further recruitment procedure can be adopted till the applicant is appointed. The following reliefs have been prayed for :-

1. To set aside Annexure A-1 and Annexure A-3 notification.
2. To pass appropriate orders directing the respondents to appoint the applicant as Library and Information Assistant as he is No.1 in the list of those candidates after the interview in Annexure A-2.

5. Respondents have filed a reply statement denying the averments. They have explained the circumstances leading to the cancellation of the notification and re-notifying the posts as follows :- Three candidates including the applicant were interviewed on 13.1.2005 by the Selection Board. The applicant was placed at Serial No.1 in the list. Aggrieved by the said select list the candidate at Serial No.3 in the said list one Kumari.Bee gum Zabia made a representation to the respondents alleging that the instructions in Administration's Circular No.12/103/90/Services dated 26.11.1990 was not followed for test and interview (Annexure R-1). When the matter was examined in detail the competent authority found that the no written test was conducted and therefore the selection procedure adopted was not according to the instructions issued by the Administration which stipulated that a written test shall be mandatory in all cases of direct recruits except Group D posts and total marks for the written test shall be maximum 80% and 20% for personal interview and within this 20% a maximum of 10% shall be for better academic qualifications. Hence the Annexure A-2 list had to be cancelled and the vacancy was re-notified as per Annexure A-3. According to them, it is also true that a notice dated 20.1.2004 was issued inviting applications for the posts of LIA. Five applications were received at that time including that of the applicant. Due to administrative reasons, the interview/test could not be held and two of the candidates from Androth Island were not properly served of the intimation about the date of test/interview, the Selection Board recommended to fix a fresh date. By that time six months had passed from the date of notification of post and therefore a fresh notice (Annexure A-1) was issued.

6. It has been further submitted that the recommendation of a Selection Committee is not binding on the appointing authority and once the appointing authority is not satisfied with the selection process, it is within the right of competent authority to reject the recommendation of the Selection Committee. Even according to the directions of the Hon'ble Supreme Court, when a mistake is committed by the authority the same cannot be allowed to be perpetuated (AIR 1995 SC 705, Chandigarh Administration & another Vs. Jagjit Singh & another and S.S.Rathore Vs. State of M.P. AIR 1990 SC 10). The applicant does not, therefore, have any legal enforceable right merely due to inclusion of his name in the list of candidates interviewed as has been held in AIR 1991 SC 2612 Shankarsan Das Vs. Union of India.

7. In the rejoinder the applicant has contended that all the circulars and notifications referred to by the respondents are illegal and once the selection process has been completed, the respondents cannot take any action on the basis of a complaint and cancel the selection.

8. Respondents have filed an additional reply statement contending that the recommendation of the Selection Committee was not published. Since it had not been accepted the appropriate authorities decided to cancel the incomplete selection process. It is not known how the applicant has produced the unpublished document from the Government file. They have also produced the Recruitment Rules for the post of Library and Information Assistant (Annexure R-4) and the Annexure R-2 circular dated 26.11.1990. It is submitted that the Recruitment Rules normally do not contain the details of the guidelines for conducting the selection and that

the written test and interview etc. are supplementary requirements which have been provided for within the frame work of circular/instructions at Annexure R-2 and Annexure R-5. The selection procedures are regulated by these instructions in force which were not found to have been followed in the case of the impugned selection. The vacancy in the case in hand was notified to the District Employment Exchange and in turn the District Employment Exchange sponsored the names of three candidates including that of the applicant as per Annexure R-8. Applications were also invited from eligible candidates simultaneously as per Annexure A-3 notice dated 4.5.2005. Hence there was no basis in the contention of the applicant.

9. We have heard the counsel for the respondents and perused the material on record. Counsel for the applicant is not present on the date of hearing despite notice. Two adjournments had been given earlier at his request and it was informed to him that no further opportunities will be given. This O.A was earlier dismissed on default for non prosecution and was restored later.

10. According to the averments and material on record the applicant's contentions are not tenable. It is already well settled law that a selectee cannot claim appointment as a matter of right and mere inclusion in the select list does not confer any right to be selected. In this case, even the so called Annexure A-2 select list is not a select list in the proper sense of the term. It only shows marks obtained by the candidates and their arrangement on the basis of marks assigned by the members of the Selection Board. As rightly contended by the respondents, it is only a recommendation/proceeding of the Selection Committee which had not

been duly approved by the competent authority and it is not even put in the form of a select list by the members of the Selection Board. It is a moot point how the applicant got possession of the list, a paper which is part of the record in the file. In any case we do not propose to go further into that matter.

11. The fact remains that it is not a select list and the applicant cannot be deemed to be a selectee. The respondents have explained why the selection process had to be cancelled after having notified the post and also after partially going ahead with the selection process. However, the explanation offered does not confer any credit on the respondents, on the other hand, it only speaks of a total callous approach and inefficiency in organising the recruitment and in observing the procedures set out by the Administration itself. It is indeed a sorry state of affairs that the department cannot undertake a selection process for one post in accordance with the rules thereby putting the aspiring candidates like the applicant to difficulties and also resulting in the post being kept vacant for long periods. While this aspect cannot be over-looked, at the same time, a mistake committed has to be rectified also and cannot be allowed to be repeated which would defeat the very purpose of the prescription in the rules. In fact this is not the first time that such lapses are coming to the notice of this Court. We would therefore request the 1st respondent to look into this matter and tighten the recruitment procedures by plugging the loopholes.

12. We, however, reject the contentions of the applicant that he has a legal right to be appointed by virtue of his having participated in the interview and come out successfully as devoid of any merit in view of the

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various pronouncements of the Hon'ble Apex Court to that effect and specifically in the judgments quoted in the reply statement. Therefore, Annexure A-3 notification dated 4.5.2005 needs no interference. The O.A stands dismissed.

(Dated the 7th..... day ofDecember..... 2006)


K.B.S.RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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