

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 364/2000

Friday, this the 8th day of February, 2002.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

B.Jaleel,
Superintendent of Survey,
Collectorate,
Administration of the Union Territory of
Lakshadweep,
Kavaratti. - Applicant

By Advocate Mr AVM Salahudeen

Vs

1. Union of India represented by
the Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti.
3. The Collector cum Development Commissioner,
Lakshadweep Administration,
Kavaratti. - Respondents

By Advocate Mr S Radhakrishnan(for R.2&3)

The application having been heard on 21.11.2001 the Tribunal
on 8.2.2002 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant, a Revenue Inspector under the
Lakshadweep Administration, is working as Superintendent of
Survey on deputation basis. He is a Matriculate who has
successfully completed the Survey Training, Computer Draftsman

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course and departmental test conducted by the Administration for the purpose of promotion to higher post. Until 1988, as per A-1 Recruitment Rules in force, Revenue Inspector was the feeder category for the post of Assistant Settlement Officer(ASO for short), a post equivalent to Tahsildar. In 1988, however, A-1 Recruitment Rules were superceded by the impugned A-2 Recruitment Rules whereby Head Clerk, U.D.Clerk and Stenographers Grade-III having at least 8 years regular service in the grade were also brought into the feeder category for promotion to the cadre of ASO/Tahsildar. The applicant being a Revenue Inspector now finds that his promotion chance is considerably curtailed by the induction of the other categories of employees into the feeder category. The repeated representations made by the Revenue Inspectors against that were unsuccessful. By impugned A-3 notification dated 17.12.90, Clause 12 of the impugned A-2 was substituted by introducing a provision making it obligatory that the incumbents aspiring for promotion as ASO/Tahsildar should pass Typewriting speed test. The substituted Clause 12 as introduced by A-3 dated 17.12.2000 is quoted below:

"Promotion from the post of Head Clerk/Accountant/Sub Treasury Officer/Coir Superintendent/Sheristadar having at least 3 years of regular service in the grade, failing which by promotion of U.D.Clerk, U.D.Clerk-cum-Store Keeper, U.D.Accountant/Commercial U.D.Clerk/Head Accountant/Stenographer G.III/Revenue Inspectors having atleast 8 years regular service in the grade.

Those who possess a pass in Criminal Judicial Test and Revenue Test conducted by the Administration or by the Kerala Public Service Commission and Department test for Ministerial staff and also the Tyepwriting speed test conducted by the Administration alone are eligible for promotion. The incumbents should successfully undergo Chain Survey training course

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(Lower) during the period of their probation after appointment to the post of Tahsildar/Assistant Settlement Officer failing which the period of probation shall be extended till the incumbent successfully undergoes the prescribed Survey Training Course. Incumbents working in these posts are interchangeable."

According to the applicant, ASO is a post dealing with revenue or survey settlement matters. The cumulative effect of A-2 and A-3 is curtailment of Revenue Inspectors promotion prospects because of the inclusion of Head Clerks/UDCs/Stenographers Grade-III etc. in the feeder categories. The condition regarding typewriting speed test for Revenue Inspectors like the applicant, would have the effect of imposing an unequal restriction adversely affecting the Revenue Inspectors and giving undue advantage to the newly introduced categories of employees as per A-2. As per A-2, while making typewriting test obligatory, with regard to chain survey training, it is leniently prescribed that the incumbents should successfully undergo Chain Survey Course(Lower) during the period of their probation after appointment to the post of Tahsildar/ASO, failing which the period of probation would be extended until they succeed in completing the Survey Training course. Thus, the ministerial staff has been favoured and the Revenue Inspectors are put to hardship. Chain Survey Training is essential for discharging the duties of ASO/Tahsildar while typewriting test is not, according to applicant. The recruitment Rules as contained in A-2 and A-3 are, therefore, biased against the Revenue Inspectors like the applicants. It is vitiated by malafides as it brings in unreasonable classification and discrimination against the category to which the applicant belongs and

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confers undue advantage on the Ministerial staff aspiring to be promoted to the cadre of ASO/Tahsildar. The applicant claimed exemption from passing the Typewriting test as allowed to LDCs not belonging to Central Secretariat Clerical Service having crossed 45 years of age. His representation in this regard (A-5) was rejected by A-6 communication. A detailed representation dated 21.1.2000 (A-7) was also rejected by the second respondent as per order dated 26.2.2000 (see A-8). Placing these facts before us, the applicant prays for the following reliefs:

i) Set aside A-6 and A-8 orders.

ii) Declare that A-2 and A-3 Recruitment Rules are illegal and unconstitutional.

iii) Direct the second respondent to promote the applicant as Assistant Settlement Officer treating him as fully qualified.

2. The respondents have opposed the the O.A. by stating that A-1 Recruitment Rules were amended by R-1 notification dated 7.6.76 as per which Head Clerk/Accountant/Sub Treasury Officer/ Coil Superintendent having at least 3 years service in the grade, failing which UD Clerk/UD Clerk-cum-Storekeeper/UD Accountant/Commercial UD Clerk/Head Accountant/Stenographer having at least 8 years service in the grade were also eligible for promotion along with Revenue Inspectors. Thus, even prior to 1988, there was a provision in the Recruitment Rules to fill up the post of ASO/Tahsildar

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by promotion from UD Clerks etc. along with Revenue Inspectors. The provision stipulating a pass in Typewriting speed test for the purpose of promotion to ASO/Tahsildar from the feeder categories was incorporated by amendments introduced as per A-3 dated 17.12.90. Some in the feeder grades like direct recruit commercial UD Clerks/Revenue Inspectors etc. did not have exposure to Typewriting skill. Therefore, the Typewriting speed test was made obligatory. Moreover, 9 years have elapsed since amendment in this regard was introduced, and the applicant could have passed the Typewriting speed test by now. The qualification of a pass in the Typewriting speed test is necessary for the effective discharge of the duties attached to the post of ASO/Tahsildar. This was the reason why the said qualification was made obligatory for all the feeder grades. Since the provision concerning Survey Training and the qualification of a pass in Typewriting speed test have been made obligatory for all feeder categories, it could not be said that there was any undue favouritism or discrimination. The exemption concerning qualification of a pass in Typewriting speed test as per instructions contained in A-4 was applicable to persons appointed as LD Clerks who did not belong to Central Secretariat Clerical Service and therefore, the applicant, who was appointed as a Deputy Surveyor to start with, could not seek that benefit. Although exemption from a pass in Typewriting speed test might be allowed to LDCs, this benefit was not available to them at the time of consideration for promotion to the grade of ASO/Tahsildar. In other words, if they aspire to become ASO/Tahsildar all the feeder categories

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had to necessarily pass the Typewriting speed test. The applicant was aware of the clear Recruitment Rule regarding pass in Typewriting test. Since he never attempted to appear for the Typewriting speed test inspite of lapse of 9 years, he cannot agitate the issue now. An earlier representation by the applicant to get the categories of Head Clerk/ UD Clerk etc. excluded from the feeder grade to the post of ASO/Tahsildar did not succeed even after a careful consideration of the representation in compliance with the directions of this Tribunal in O.A.1514/95. With regard to the essentiality of the qualifications, the applicant could not demur and the courts also could not consider and assess the relevancy and suitability thereof as held by the Supreme Court in J.Ranga Swamy Vs Government of Andhra Pradesh, AIR 1990 SC, 535 and V.K.Sood Vs Secretary, Civil Aviation and others, AIR 1993 SC, 2285, according to the respondents.

3. Shri A.V.M.Salahuddin, learned counsel for the applicant and Shri S Radhakrishnan, learned counsel for respondents 2&3 were heard.

4. Learned counsel for the applicant would contend that originally, as per A-1 there was no condition regarding Typewriting speed test. Such a condition was introduced as per A-3 amendment of A-2 Recruitment Rules. According to the learned counsel, exemption admissible in the case of LDCs not belonging to Central Secretariat Service could be reasonably extended to the non-ministerial category of Revenue Inspectors

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also. When the requirement of Chain Survey training is made liberal and can be fulfilled after appointment during the normal or extended probation period, the condition regarding passing the Typewriting speed test for promotion to ASO/Tahsildar cadre is unreasonably stringent since the latter qualification is insisted upon prior to appointment itself. This, according to the learned counsel, was violative of equality before law and equal opportunity granted by the Constitution. He would place reliance on the decision of the Supreme Court in Dr.Ms.O.Z.Hussain Vs Union of India, AIR 1990 SC, 311 for the proposition that framing of appropriate Recruitment Rules is necessary in order to ensure that similarly placed people receive similar promotional incentives. Learned counsel would, therefore, maintain that rules of recruitment or promotion that defeat this purpose have to be amended.

5. Shri S Radhakrishnan, learned counsel for respondents 2&3 pointed out that the applicant was aware of the fact that all aspirants for the post of ASO/Tahsildar has to necessarily pass the Typewriting speed test. Inspite of sufficient time, the applicant did not even make an attempt. The validity of the Recruitment Rules cannot be questioned on the ground that some of the feeder categories had already one or more of the prescribed qualifications and some others did not have. There was no malafide or undue favouritism in incorporating such a condition in the Recruitment Rules. While framing the Recruitment Rules, the administration was fully aware of what was essential for the efficient discharge of the functions

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expected of the post. That was the reason why pass in the Typewriting test made an obligatory condition. That could not be compared to Chain Survey training which involved a collective exercise. Even here, Chain Survey training is not dispensed with. There is no relaxation in standard. If the course was not completed the probation would naturally get extended. It was for the administration to formulate what was suitable for it and that privilege cannot be questioned in a court. Learned counsel for the respondents would place reliance on the Supreme Court's decision in V.K.Sood Vs Secretary, Civil Aviation and others, AIR 1993 SC, 2285 with regard to the unimpeachability of duly formulated Recruitment Rules. The applicant's argument that being a non-ministerial employee, he should be exempted from Typewriting test, cannot, therefore be entertained and the application was liable to be rejected, learned counsel would plead.

6. We have gone through the records, considered the pleadings and the further arguments putforward by the rival counsel.

7. We find that when A-1 Recruitment Rules were in force, Revenue Inspector was the only feeder category for promotion to the post of ASO/Tahsildar. There was no condition with regard to passing of Typewriting speed test at that time. However, there was a condition regarding Survey training. Several other categories of employees were added under feeder categories for the post of ASO/Tahsildar by a new set of rules

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framed in 1988 (A-2) which was in supersession of A-1. There was no stipulation regarding a pass in the Typewriting speed test as per new set of rules either. In our view, the expansion of the feeder categories by introducing some ministerial categories of employees for purposes of promotion to the cadre of ASO/Tahsildar cannot be faulted. It was for the administration to decide its priorities for ensuring maximum efficiency by opening up channels for promotion to different categories of employees who would otherwise stagnate. In any case, the applicant's representation in this respect was unsuccessful and we, therefore, decline to interfere in this regard.

8. The obligatory condition regarding a pass in the Typewriting speed test for promotion as ASO/Tahsildar was introduced only as per A-9. We observe that in A-3, apart from passing of a Typewriting speed test, the feeder categories of employees are also enjoined to successfully undergo Survey training course. No doubt, passing of Typewriting test is a condition precedent to appointment while undergoing Survey training course is a post appointment exercise. It is also noticed that this course is to be completed during the normal probation period failing which the probation would get extended till the incumbent undergoes the training in full measure. We do not find any unreasonable classification with regard to the two stipulations, one concerning passing the Typewriting speed test and the other concerning undergoing the Survey training. In our considered view, passing the speed test is a qualification while the

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Survey experience is something that could be acquired over a period of time once the necessary inputs are provided in the course of the training. Apart from this, we do not venture to make any guess work as to the reasonableness of the distinct manner in which the conditions regarding passing of Typewriting speed test and undergoing Survey training course are stipulated in the Recruitment Rules. The Recruitment Rules are made under Article 309 of the Constitution. The administration knows what is best suited to it. There is no apparent malafide or perverse intent behind the formulation of the impugned Recruitment Rules. The applicant's imputation that the impugned Recruitment Rules would defeat the concept of efficiency in public service is not acceptable. What the applicant seeks is a total exemption from a qualification that has been perceived to be necessary for the efficient discharge of the functions of the post of ASO/Tahsildar. It cannot be accepted that ASO/Tahsildar will always remain exclusively vested with survey and settlement functions. The post of ASO/Tahsildar are interchangeable and necessarily a significant amount of office work of confidential nature has to be carried out with speed and efficiency. Typewriting skill cannot therefore be dismissed as irrelevant. The case law relied on by the learned counsel for respondents 2&3, viz, V.K.Sood Vs Secretary, Civil Aviation and others, AIR 1993 SC, 2285 is relevant in the context of the present case. While examining the constitutional validity of the Recruitment Rules governing the post of Examiner of Personnel in the Department of Civil Aviation, the Apex Court has observed as under:

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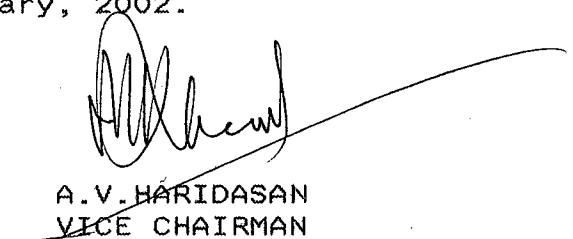
"Thus it would be clear that, in the exercise of the rule making power, the President or authorised person is entitled to prescribe method of recruitment, qualifications both educational as well as technical for appointment or conditions of service to an office or a post under the State. The rules thus having been made in exercise of the power under proviso to Art. 309 of the Constitution, being statutory cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit the stated individuals whose names have been mentioned in the appeal. Suffice to state that it is settled law that no motives can be attributed to the Legislature in making the law.."

9. The stipulation regarding pass in Typewriting speed test may be easier for some ministerial employees in the feeder categories while it may offer some difficulty to others. Similarly, the condition regarding successful completion of the Survey training course may perhaps be advantageous to non-ministerial categories of employees like the applicant and arduous for the ministerial aspirants. But that by itself, cannot obviate the need for or reduce the relevance of such qualifications for the efficacious conduct of work expected of ASO/Tahsildar.

10. On the facts and in the circumstances of the case discussed above, we find that none of the prayers in this O.A. can be allowed and that the same is liable to be dismissed. Accordingly, we dismiss the O.A. leaving the parties to bear their respective costs.

Dated, the 8th February, 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures

1. A-1: True copy of the Asstt. Settlement Officers Recruitment Rules 1973 published on 6.9.73.
2. A-2: True copy of the Lakshadweep Administration Tahsildar/Assistant Settlement Officer Recruitment Rules, 1988 published on 2.9.88.
3. A-3: True copy of the Lakshadweep Administration Recruitment Rules to the post of Tahsildar/Assistant Settlement Officer(amendment) Rules, 1990 published on 17.12.90.
4. A-4: True copy of the OM No.140/2/91-Estt.(D) dt.29.9.92 issued by the 1st respondent.
5. A-5: True copy of the representation dt.1.4.99 filed by the applicant before the 3rd respondent.
6. A-6:True copy of the order dated 9.7.99 passed by the 3rd respondent.
7. A-7: True copy of the representation dt.21.1.2000 filed by the applicant before 2nd respondent.
8. A-8: True copy of the order dt.26.2.2000 passed by the 2nd respondent.
9. A-9: True copy of the Office Order dt.9.10.99 issued by the 2nd respondent.
10. A-10: True copy of notification No.1/6/93 LR(Estt) dt.24.2.94 issued by 2nd respondent.
11. A-11: True copy of OM F.No.3/1/950SO(1) dt.18.9.95 from the O/o the Settlement Officer, U.T. of Lakshadweep.

Respondents' Annexures

12. R1: True copy of the Lakshadweep Administration Recruitment Rules 1976 Published on 7.6.76.