

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 364/2007

Friday..., this the ^{18th day of January, 2008.}

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MRS. O.P.SOSAMMA, ADMINISTRATIVE MEMBER**

K.Kamaruddeen,
S/o Kasmi Koya,
Kuttilammada House, Agatti Island,
Lakshadweep. ... **Applicant**

(By Advocate Shri P.K.Ibrahim)

versus

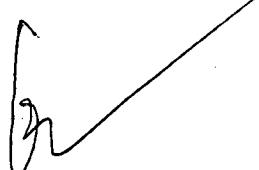
1. The Superintending Engineer,
Lakshadweep Public Works Department,
Kavaratti.
2. The Administrator,
Union Territory of Lakshadweep,
Kavarathi.
3. K.I. Najmunnisabi, Kakkailam House,
Kalpeni.
4. Beefathimabi, Superintendent,
PWD Circle Office, Kavaratti. ... **Respondents**

(By Advocate Mr.Shafik M.A.(R.1&2)
(By Advocate Mr.Millu Dandapani(R3)

**The application having been heard on 8.1.2008
the Tribunal on 18-1-08 delivered the following:**

ORDER
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Certain important questions of law arise through this O.A. First, minimum facts of the case. The Lakshadweep Administration had published a notification dated 7th October, 2005 for filling up four posts of Junior Engineer.



Two posts were reserved for Physically Handicapped while the rest two have been for general candidates. The proforma prescribed for application is one and the same for the two categories vide Annexure A-1 and the same is as under:-

1. Name and Address
2. Father's Name
3. Date of Birth
4. Education/Academic Qualification
5. Addl. Qualification, Experience,
Practical knowledge in Engineering Construction
6. Employment Registration No.
7. Remarks if any
8. Signature of the applicant.

Last date for receipt of application was 30 days of date of publication.

2. The applicant had applied in the prescribed proforma which was received by the respondents on 20-10-2005. Certain testimonials had been annexed to the application. He had obtained a medical certificate from the General Hospital, Ernakulam on 28th April, 2006 wherein it was certified that the permanent total disability (deafness) of the applicant was 40%. The applicant had forwarded this certificate to the respondents under letter dated 19th October, 2006. Vide Annexure A-2 communication dated 20th October, 2006, eligible candidates had been informed that the vacancies would be one each for the Physically handicapped and general vacancy. 8th November, 2006 was the date fixed for production of testimonials in original. The applicant was one of the eligible candidates from Agatti Island. After written examination was conducted in which the applicant also participated, notice dated 30th April, 2007 was published vide Annexure A-5, one under the physically handicapped and three under the general quota were selected for interview. The name of the applicant did not figure in either under the Physically Handicapped Quota or under the General Quota. The applicant had applied for and obtained certain information under the



R.T. I. Act and has challenged the above Annexure A-5 notice and has prayed for the following:-

- (a) Setting aside of Annexure A-5 notice.
- (b) To call for the selection records including answer sheets and answer key to examine the extent of correctness in evaluation.
- (c) To declare that short listing one person alone under the Physically Handicapped quota is arbitrary and illegal.
- (d) To direct the respondents to complete the selection process strictly in accordance with Annexure A-1 notification and short list the candidates keeping a minimum of three times higher than the post to be filled.

3. Respondents have contested the OA. Private respondent too has filed the counter.

4. According to the respondents, the case of the applicant was considered and since he did not indicate anywhere that he had applied under the Physically Handicapped Quota and since the medical certificate had been received long after the expiry of last date for submission of application and further since his name was not sponsored by the Employment Exchange under the Physically Handicapped Quota, it was decided at the level of Secretary not to include his name under the Physically Handicapped quota.

5. Private respondent has also contended that the applicant having not reflected anything in the application that he is a candidate under Physically Handicapped Quota, his case was rightly registered as one for general vacancy.

6. ~~Counsel for the applicant raised the following questions:-~~

- ~~(a) Whether the number of vacancies could be varied from the one duly notified earlier.~~

(b) Whether short listing could be made without making due announcement at the time of calling for the applications.

(c) Whether there could be only one candidate for interview for one post.

(d) When there is no separate notification – one for general category and another for Physically Handicapped ones, is it compulsory that at the time of application itself the medical certificate should be annexed.

7. Counsel for the applicant relied upon the decision of the Hon'ble High Court of Kerala in the case of **Ajayan vs State of Kerala (2006) 3 KLT 854**. He had highlighted the following aspects from the judgment:-

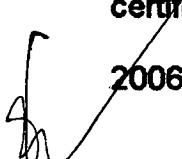
(a) In the absence of fixation of cut off marks in the notification and in the rules, fixation of cut off marks cannot be made as a criteria.

(b) Authorities will be entitled to fix cut off marks in the written examination or in the oral examination to weed out incompetent candidates provided the PSC shall make it clear in the notification itself. But cut off marks cannot be prescribed without mentioning in the notification or in the procedure.

(c) Shortlisting should not be done in an arbitrary manner and it should relate not only to the existing vacancies, but also to the anticipated vacancies and it is always better to prescribe the manner why shortlisting is done before the selection process starts.

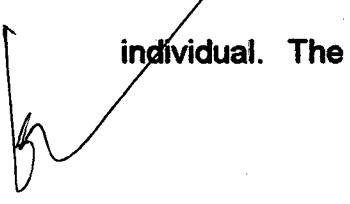
8. Counsel for the respondents submitted that the action taken as reflected in the relevant records which have been produced for perusal by the Court is fully justified. The applicant has not furnished the documents relating to his physical deficiency at the appropriate time and thus, there was no question of his being considered under the Physically Handicapped Quota.

9. Arguments were heard and documents perused. The medical certificate furnished by the applicant was received in the office on 26th October, 2006. The office of the respondents had submitted to the competent authority



that the applicant had submitted the application on time, but the medical certificate was not added to the application. The District Employment Exchange also did not sponsor the name of the applicant under the Physically Handicapped Quota. The case was considered at the Secretary level to decide whether the applicant should be treated as a candidate who had applied for the post of Junior Engineer under the Physically Handicapped Quota or under General Quota. It was then decided to treat the applicant as only from the General candidates and not under Physically Handicapped Quota, as the applicant did not submit the medical certificate along with the application, nor has the District Employment Exchange sponsored him as a Physically Handicapped candidate.

10. *The main attack of the applicant is that he was not considered under the Physically Handicapped Quota.* His contention is that he having applied prior to the holding of written examination, and there being not many candidates under the Physically Handicapped quota, the respondents ought to have entertained the application under the Physically Handicapped quota. This was not done. Failure to consider the applicant under the Physically Handicapped Quota has resulted in the reduction of two vacancies to one and again, against one vacancy, there is only one candidate said to have qualified for participating in the interview. It is further argued that normally, for any post, there shall be certain zone of consideration. If provision exists for this purpose, the same could be followed. Instead, if there be no such rule, then a reasonable ratio should be maintained. In the instant case for one post, having only one individual for interview purpose would mean that there is no choice other than the said individual. The contention of the Counsel for the applicant that the decision to



reject the applicant's candidature under the Physically Handicapped Quota simply on the ground that the medical certificate was not annexed to the application but has been separately sent after the expiry of the last date would be harsh to the applicant, merits consideration. The applicant is from a far flung, backward area of the islands and such cases should be given due consideration as to their backwardness. The decision to reject the case would have been certainly appreciated, had there been adequate number of aspirants under the Physically Handicapped Quota. Admittedly, including the applicant there are only two candidates and the number of posts under this quota as advertised was two.

11. As regards cut off marks etc., as stated earlier, the counsel relied upon certain decisions of the Hon'ble High Court as well as the Apex Court.

12. In so far as zone of consideration is concerned, it would certainly be appropriate if there be some ratio other than 1:1. That would give a wider choice of selection. No doubt it is left to the employer. It has been held in the case of *S.B. Mathur v. Chief Justice of Delhi High Court, 1989 Supp (1) SCC 34* as under:-

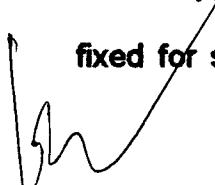
"So long as the zone of consideration is limited by the competent authority in a manner not inconsistent with the Rules or in a manner which is not arbitrary or capricious or mala fide, the validity of the decision to limit the zone of consideration cannot be successfully called in question on the ground that the manner in which the zone of consideration was limited was not uniform. The zone might have, been limited on each occasion keeping in view the relevant circumstances including the number of posts vacant and on a basis having a nexus to the purpose of selection."

13. The case deserves consideration from another angle. One must take into

account the avowed objective of the Government in encouraging the Physically disabled persons in matters of employment. Preamble to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as extracted in the case of *Union of India v. Sanjay Kumar Jain*, (2004) 6 SCC 708, is to give effect to the *Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region*. In a meeting to launch the Asian and Pacific Decade of the Disabled Persons, 1993-2002 convened by the Economic and Social Commission for Asian and Pacific Region, which was held at Beijing from 1-12-1992 to 5-12-1992, a proclamation was adopted on the *Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region*. Our country is a signatory to the said Proclamation.

14. When such is the objective, to reject the candidature of a physically handicapped person to participate in the selection process under that quota would amount to disregarding the above objective. By permitting the applicant to participate in the interview under that quota, no one's vested right gets diluted. Instead, the field of choice would become wider. Of course, if there be any minimum marks prescribed for such quota the applicant would be eligible to participate in the interview only if he has obtained minimum of such marks. There cannot be any compromise to the efficiency expected in the candidates.

15. In view of the above, the OA is disposed of with a direction to the respondents to permit the applicant for interview under the Physically Handicapped Quota, provided the applicant has obtained the minimum marks fixed for such interview and action taken on the basis of performance in the



interview for appointment. In case the applicant has not obtained the minimum marks under the relaxed standard, if any, he may be suitably informed.

16. Under the above circumstances, there shall be no orders as to costs.

(Dated, the 18th January, 2008)



(O.P. SOSAMMA)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVR.