

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 368 of 2011

MONDAY, this the 25th day of February, 2013

CORAM:

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

Sainudheen Kallikagothi,
Kudethi Village, Minicoy,
Union Territory of Lakshadweep Applicant.

(By Advocate Mr. P. Babu Kumar)

v e r s u s

1. Director of Education,
Kavaratti, Lakshadweep.
2. Union Territory of Lakshadweep,
Represented by Administrator,
Kavaratti : 682 555
3. Saheda Mudinkorhige,
Funhilol Village, Minicoy Island,
Lakshadweep. Respondents.

(By Advocate Mr. S. Radhakrishnan for R1-2 and
Mr. K. Mohanakannan for R-3)

This application having been heard on 19.02.2013, the Tribunal on
25-02-13 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The one and only post of Mahal Translator under the Lakshadweep Administration was vacant since 18.10.1993 on the resignation of Shri K.G. Mohammed, who is presently employed in the Lakshadweep Government Press, Minicoy. Mahal Translator is an important link for the people at Minicoy.



where it is spoken, for translation of study materials for the children and other documents for the people at large. In order to meet the felt need of the people of Minicoy, permission was granted by the Administrator to fill up the post of Mahal Translator as per the Recruitment Rules for the post, by direct recruitment from eligible candidates having pre-degree or equivalent and thorough knowledge in Mahal language. The applicant is one of the 33 candidates who responded to the notification dated 09.03.2009 in the Lakshadweep Times/ sponsored by the Employment Exchange/ other means, as the case may be. The Recruitment Committee constituted by the Administrator vide order dated 18.09.2009 met on 13.01.2010. The Committee found that 30 out of 33 candidates are eligible for the post as per the qualifications prescribed. The Committee recommended to conduct a written test and interview to test the knowledge of Mahal and proficiency in translation of Mahal materials into English and Malayalam and vice versa. The Administrator approved the same on 27.01.2010. In the meeting held on 05.06.2010, the Recruitment Committee decided to hold the written test on 30.06.2010 and entrusted the preparation of question papers with two Committee members, namely, Shri M.Hassan, Executive Engineer (Ele.) and Shri A.R. Basheer, Assistant Director, Department of Panchayaths. 14 candidates who appeared in the written test on 30.06.2010 were directed to attend the interview on 01.07.2010. Only 12 candidates appeared for personal interview which was held on 01.07.2010 and 07.07.2010. Marks were awarded to the candidates as described elsewhere in this order. Based on the merit list made on the basis of the marks, the 3rd respondent was ranked No.1 and the applicant was wait listed being No.2, as per the minutes of the Committee meeting on 01.07.2010 which was approved by the Administrator

A handwritten signature consisting of a vertical line with a small loop at the top and a diagonal line extending from the bottom right.

on 08.08.2011. The applicant lodged a complaint against the selection on 24.02.2011. This O.A was filed by him on 14.04.2011. The third respondent was offered the post of Mahal Translator on 11.03.2011 and she accepted it on 22.03.2011. She reported for duty on 20.08.2011. The applicant has filed this O.A for the following reliefs:

- (i) Issue a writ of certiorari or any other appropriate writ, order or direction, quashing the selection conducted as per Annexure A-1 notification and test and interview conducted as per Annexure A-2 and issue direction to conduct a fresh test for the candidates already applied and prepare a new rank list through an independent and impartial agency;
- (ii) Issue a direction to the 1st respondent to conduct an impartial enquiry about the conduct of test and interview and punish who is responsible for the irregularity;
- (iii) Issue a direction to the 2nd respondent to entrust the recruitment to an independent agency to avoid malpractice in future;
- (iv) Issue any other appropriate writ, order or direction, which this Hon'ble Court deems fit and proper in the nature and circumstances of the case.

2. The applicant contended that his fundamental right for equal opportunity in public employment is violated in this case. The written test was conducted on 30.06.2010, but the interview was conducted on 01.07.2010 (wrongly stated as 31.06.2010), which is a clear violation of the guidelines issued by the Hon'ble Supreme Court in a number of cases. It is not stated in the intimation issued for the written test that there will be an interview after the written test. The result of the written test and the interview were not published. The setting of question paper and the valuation of the answer sheets were done by the cousin brother of the 3rd respondent and both were residing in the same house. It took more than 06 months to complete the valuation.

A handwritten signature or mark, appearing to be a stylized 'V' or a checkmark, is located at the bottom right of the page.

3. In the reply statement filed on behalf of the respondents No.1 and 2, it was submitted that the setting up of question paper, its custody, custody of answer sheets and their valuation have been done under the supervision of the Department of Education and, therefore, there is no truth in the contention raised by the applicant doubting the integrity of the officers who participated in the selection procedure. The selection procedure has been totally transparent and has been done in an independent and impartial manner.

4. The 3rd respondent in her reply statement submitted that she is the daughter of Shri Basheer's mother's sister and hence only a distant relative and they are not residing together as alleged. In a situation where there is no formal learning of the language and no public examination conducted, the Administration had to find persons who could examine the proficiency of the candidates. Shri Basheer is the only official translator in the Administration who can assist the selection process.

5. In the rejoinder statement, the applicant submitted that there are many officers available in the Lakshadweep Administration who know Mahal language and cited a number of names of Mahal knowing officers. He has produced photo copy of voters' list containing the names of the mother of Shri A.R. Basheer and the mother of Shaheeda (3rd respondent) to show that they are residing in one house, which is numbered as E2-198. It is not clearly stated who actually prepared the question papers.

6. We have heard Mr. P. Babu Kumar, learned counsel for the applicant,

A handwritten signature consisting of a stylized 'J' and a diagonal line.

Mr. S. Radhakrishnan, learned counsel for the respondents 1 and 2 and Mr. K. Mohanakannan, learned counsel for the respondent No.3 and perused the records.

7. As per the Lakshadweep Education Department (Group-C Posts) Recruitment Rules, 1977, notified on 03.04.1977, educational and other qualifications for direct recruits for appointment to the post of Mahal Translator is as under :

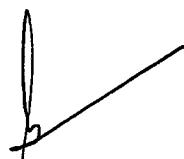
- (i) Pre-degree or equivalent;
- (ii) Thorough knowledge in Mahal Language

In the notification dated 09.03.2009, it is stated that "the selection of candidates will be purely on academic merit of the applicants while also giving consideration to the applicant's higher qualifications and experience for the job". The academic merit in Mahal language cannot be determined as there is no authorised institution to conduct examination and to certify the same. The Recruitment Committee is not an authorised institution for the purpose. Therefore, it goes without saying, if academic merit is the criterion then it will be the marks obtained in pre-degree or equivalent examination. How thorough knowledge in Mahal language to be assessed is not stated in the Recruitment Rules. Therefore, the Recruitment Committee recommended to conduct a written test and interview to assess the proficiency of the candidates in Mahal language in its meeting on 13.01.2010. This recommendation was approved by the Administrator. Thus, a gap in the Recruitment Rules was filled in. Filling up the gap in the Recruitment Rules to achieve the purpose of the Recruitment Rules is not contrary to the Recruitment Rules. It only supplements the Recruitment Rules.

8. The Recruitment Committee in its meeting held on 01.07.2010 decided the criterion to award marks for the purpose of selection for appointment to the post of Mahal Translator as under:

(i) Written test	:	85 %
(ii) Basic Qualification	:	08 %
(iii) Additional qualification	:	02 %
(iv) Personal Interview	:	05 %

The academic qualification of pre-degree/equivalent/additional qualification was given a mere 10% weightage, 5% weightage was given to the interview and 85% weightage was given to the written test. This criterion of awarding marks is not in accordance with the Recruitment Rules. It is hugely at variance with the Recruitment Rules according to which only the marks obtained in pre-degree or equivalent can be reckoned for assessing the academic merit of the candidates. No prior sanction was taken from the Administrator for formulating a criterion for awarding marks in the manner it was done. The rules of the game cannot be changed after the game started. The respondents cannot change the horses mid stream. Once the process of selection started with the notification dated 09.03.2009, the Recruitment Rules could not have been changed mid way. The Recruitment Committee was not empowered to make changes in the Recruitment Rules. Even the Administrator cannot do it in respect of a selection under way. He can change the Recruitment Rules for selections only prospectively. Therefore, the merit list prepared as per the invalid criterion is illegal. The Committee could have shortlisted the candidates on the basis of the marks from among those who have appeared in the written test and interview to assess their proficiency

A handwritten mark or signature consisting of a vertical line with a small loop at the top and a diagonal line extending from the bottom right.

in Mahal language. From among them, the select list of one could have been prepared, on the basis of their marks in pre-degree or equivalent. Such a course of action would have been in accordance with the Recruitment Rules. The results of written test and interview and marks of the candidates in pre-degree or equivalent should have been published.

9. In view of the manifest illegality as above, we do not find it necessary to go into the merits of the arguments in the O.A except making the following observations. Justice should not only be done, but it should be seen to be done. Caesar's wife should be above suspicion. It is not surprising that the Recruitment Committee which ignored the Recruitment Rules, disregarded the above well known dicta in legal jurisprudence. On 13.01.2010, it was clear that Shri Basheer's relative was a candidate for selection to the post of Mahal Translator. The appropriate course of action for him was to disassociate himself from the selection process. There were other Mahal knowing officials like the past incumbent of the post of Mahal Translator.

10. In the result, the O.A is allowed as under. The appointment of the 3rd respondent as Mahal Translator and the entire selection process pursuant to Annexure A-1 notification are quashed. However, the 3rd respondent may continue to hold the post of Mahal Translator as a stop gap arrangement for 04 months from the date of this order or till a new hand selected as per the Recruitment Rules arrives, whichever is earlier. The respondents are directed to complete fresh selection process as per the Recruitment Rules as early as possible, at any rate within 04 months from the date of this order. How the knowledge of Mahal will be tested should be mentioned in the notification

A handwritten signature consisting of a stylized 'U' shape followed by a diagonal line.

calling for applications for appointment to the post of Mahal Translator. None. who is related to a candidate should be associated with the Mahal test. No order as to costs.

(Dated, the 25th February, 2013)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

CVR.