

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 377 of 1996

Thursday, this the 6th day of November, 1997

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

1. K.M. Sayed Mohammed,
Assistant Engineer,
Public Works Department, Amini.
Residing at Government Type 5 Quarter,
Amini.

.. Applicant

By Advocate Mr. PV Madhavan Nambiar

Versus

1. Union of India, represented by
Secretary to Government of India,
Ministry of Urban Development, New Delhi.

2. The Administrator,
Union Territory of Lakshadweep,
Kavarathi.

3. The Superintending Engineer,
Lakshadweep, Kavarathi.

4. S. Attakoya,
Assistant Surveyor of Works,
Lakshadweep Public Works Department,
Kavarathi.

.. Respondents

By Advocates Mr. PR Ramachandra Menon, ACGSC (R1-R3) and
Mr. MR Rajendran Nair (R4)

The application having been heard on 6.11.1997, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A-X, to issue a writ of Mandamus or other appropriate writ, order or direction to the respondents to send up papers of the applicant and others in pursuance of A-IV, A-V and A-VII for selection to the post of Executive Engineer, to declare that A-XI to the extent it purports

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to cancel the relaxation made with regard to the educational qualification is not valid or binding as far as the applicant is concerned, and to regularise the applicant holding the post of Executive Engineer from 23.5.1995, if once he is selected and to pay his remuneration arrears and other benefits as a full pledged Executive Engineer from that date.

2. The applicant joined the Lakshadweep Public Works Department on 1.4.1971 as a Junior Engineer. He holds a diploma in Civil Engineering. He was promoted as Assistant Engineer/Assistant Surveyor, Works, on 24.10.1978. His further promotion is to the post of Executive Engineer. The qualification for promotion to the post of Executive Engineer from Assistant Engineer is a Degree in Civil Engineering or equivalent qualification as per CPWD Rules which was being followed. On 7.1.1980, the Administrator addressed the Secretary to Government to have the qualifications relaxed as the Administration found it difficult to get a substitute when the incumbents go on leave or repatriation and to have Recruitment Rules of its own. Thus, A-I recruitment rules have been framed. As per A-I, for promotion to the post of Executive Engineer from the post of Assistant Engineer, one should have a Degree in Civil Engineering with 8 years of service. Rule 6 of A-I rules provides for relaxation of qualification by the Central Government in consultation with the Union Public Service Commission. As per A-V dated 21st of June, 1988, relaxation of the prescribed educational qualification in respect of those Assistant Engineers who do not possess a Degree in Engineering but who have the required qualifying service of 8 years was granted. The applicant is relying on A-V relaxation for the purpose of getting promoted to the post of Executive Engineer. A-VII is dated 17th of April, 1995. It says that the Ministry has no objection to the relaxation of the prescribed educational

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qualification in the case of five Assistant Engineers including the applicant. As per A-X and A-XI impugned orders, A-VII dated 17th of April, 1995 is superseded.

3. The learned counsel appearing for the applicant vehemently argued that the relaxation validly granted is A-V dated 21st of June, 1988 and that it is a whole time relaxation and not a one time relaxation in respect of a particular vacancy that has arisen at a particular point of time. According to the respondents, the relaxation as per A-V was only for the sole vacancy of Executive Engineer in the year 1986 and the same has no application to subsequent vacancies.

4. The whole matter rests upon the question whether A-V relaxation is a whole time relaxation or only relating to the particular vacancy. Rule 6 of A-I says that where the Central Government is of the opinion that it is necessary or expedient to do so, it may by order, for reasons to be recorded in writing and in consultation with the Union Public Service Commission, relax any of the provisions of these rules with respect to any class or category of persons. So, there is a provision to relax the rules in respect of any class or category of persons. It is not stated in the rules that such a relaxation is a whole time relaxation or it is only in respect of a particular vacancy. No authority was brought to our notice by either side in support of their stand. On an anxious consideration of the provisions contained in Rule 6 of A-I and the facts of the case, we are of the view that it is only a relaxation for a particular vacancy and not a whole time relaxation. If it is interpreted as a whole time relaxation, there will be far reaching consequences affecting other persons qualified. If it is interpreted and understood as a whole time relaxation,

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it will be affecting those who are qualified by not getting promotion to the post of Executive Engineer and loosing their chance by substituting with persons who are granted relaxation of qualification. The intention of the rule makers cannot be understood to be in that fashion. Hence, we hold that the relaxation granted as per A-V is only a relaxation for the vacancy that was available for the post of Executive Engineer in the year 1986 and for the year 1986 only and not whole time relaxation.

5. As far as A-X is concerned, it is stated therein that letter dated 17th of April, 1995 (A-VII) granting relaxation of the prescribed educational qualification in the case of the applicant and four other diploma holders is superseded. Even though it is stated in A-X that the letter dated 17th of April, 1995 grants relaxation of the prescribed educational qualification, on going through the same it cannot be said that it grants relaxation of the prescribed educational qualification. Relaxation of prescribed educational qualification can be done by the Government only in consultation with the Union Public Service Commission as per A-I rules. The learned counsel for the applicant also submitted that A-VII is only a step for the purpose of getting the educational qualification relaxed and not an order relaxing the educational qualification. That being so, nothing turns on A-VII. Hence, there is no necessity to supersede A-VII as stated in A-X and A-XI for the simple reason that even without superseding it has got no force of an order granting relaxation of the prescribed educational qualification.

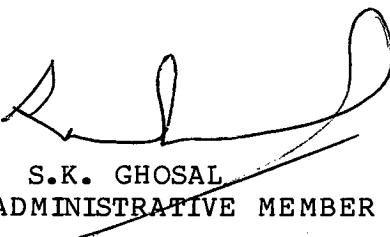
6. Since we have found that the relaxation granted as per A-V is only for the particular vacancy that has arisen in the year 1986 and not a whole time relaxation, the applicant is not entitled to any of the reliefs claimed in this application.

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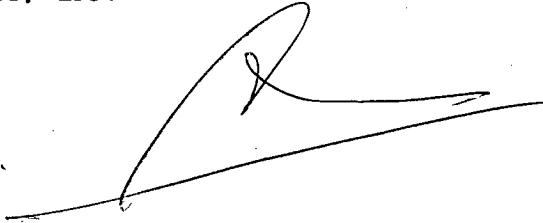
7. Accordingly, the original application is dismissed. No costs.

8. We make it clear that since A-VIII and A-VIII(a) orders are not under challenge, this order will not stand in the way of the applicant making representation before the 2nd respondent as to his grievance regarding the non-payment of additional remuneration for the period he was attending the duties of Executive Engineer as per A-VIII and A-VIII(a).

Dated the 6th of November, 1997



S.K. GHOSAL
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES

1. Annexure AI: Recruitment Rules issued by Government of India, Ministry of Works and Housing (Works Division) No.25014(1)/80-EW2 dated 12.6.1981.
2. Annexure AIV: Order No.F1/14(1)87-A issued by Under Secretary, Union Public Service Commission to the 1st respondent, dated 16.6.1988.
3. Annexure AV: Letter No.25014(4)/81-EW2/EW1 dated 21.6.1988 issued by the 1st respondent to the 2nd respondent.
4. Annexure AVII: Letter No.28017/1/91-EW1 dated 17.4.1995 by the Under Secretary to Government of India to the 2nd respondent.
5. Annexure AVIII: Office order F.No.3/2/6456/95-C1 dated 10.4.1995 by Superintending Engineer, Public Works Department, Union Territory of Lakshadweep.
6. Annexure AVIII(a): Order No.F.No.1/1011/95-C2 dated 9.8.95 by the 2nd respondent.
7. Annexure AX: Office Memorandum No.F. No.3/7/2137/94-C1 dated 11.11.1995 by the Administrator to the applicant.
8. Annexure AXI: Order dated 12.10.95 of the Government of India, Ministry of Urban Affairs and Employment, Department of Urban Development to the 2nd respondent.

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