

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 377 / 2008

Thursday, this the 6th day of August, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Amshad.P.,
S/o M.K.Nallakoya,
Perumbally Androth Island,
Union Territory of Lakshadweep.Applicant

(By Advocate Mr P.V.Mohanan)

v.

1. Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. Abdul Sammad.T.P.,
Thattampokkada,
Androth Island,
Union Territory of Lakshadweep.Respondents

(By Advocate Mr S Radhakrishnan)

This application having been finally heard on 10.7.2009, the Tribunal on 6.8.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant and the 2nd respondent, viz, Shri Abdul Samimad.T.P. have undergone selection procedure for the post of Lower Division Clerk by direct recruitment under the physically handicapped quota in terms of the Annexure A-4 circular dated 30.1.2008 issued by the respondent-Administration. The contention of the applicant is that the 2nd respondent was not eligible to be considered in terms of Section 2(i) of the Persons with Disabilities (Equal

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Opportunities, Protection of Rights and Full Participation) Act, 1995 (1995 Act for short). He has, therefore, sought a direction to the respondents to quash the selection of the 2nd respondent and to declare that he was not suffering from disability as defined under Section 2(i) of the 1995 Act.

2. The respondent-administration had issued the Annexure A-4 notification inviting applications to fill up the post of L.D. Clerk under the physically handicapped category. Both the applicant as well as the 2nd respondent have applied for the same. The 2nd respondent was selected and appointed for the aforesaid post. According to the applicant, there was no need to conduct any written test for the selection of the suitable candidate and the selection should have been made after evaluating the nature and disabilities suffered by each candidate. Since he was suffering from 70% disability, he should have been selected as against the 2nd respondent who was suffering from only 50% disability. He has also submitted that when he got 60% marks in the written test, he was not called for the typing test for final selection. His other contention was that the Disability Certificate produced by the 2nd respondent was invalid as the same was issued by the Indira Gandhi Hospital, Kavaratti, Lakshadweep which is not declared as a medical authority specified under the 1995 Act and in of the cases the Hon'ble High Court of Kerala held that the disability certificate issued by Doctors of Indira Gandhi Hospital, Lakshadweep cannot be accepted as a valid certificate as there are no specialists in the said hospital.

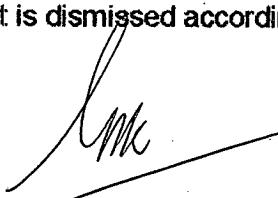
3. The first Respondent in the reply statement has denied the contentions of the applicant. It has submitted that the applicant's statement that he has secured 60% marks was absolutely baseless whereas he has secured only 58 (48.3%) marks out of 120 assigned for the written test. On the other hand, the 2nd respondent secured 62 marks (51.6%) out of 120 marks assigned for written



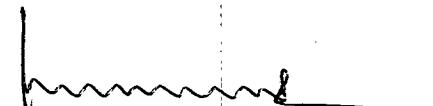
test. It has also submitted that initially when the 2nd respondent furnished the disability certificate from the Medical Bord, Lakshadweep the same was not accepted. He was offered appointment with the condition that he shall submit the disability certificate from the competent authority. Accordingly he produced the Annexure R1(e) certificate dated 11.7.2008 from the District Medical Board, Ernakulam stating that he has 50% disability.

4. We have heard Shri P.V.Mohanan, learned counsel for the applicant and Shri S Radhakrishhan, learned counsel for the 1st respondent. The contention of the applicant that there was no need to conduct any selection procedure for appointment of candidates suffering from physical disability and the appointment should be based on the percentage of disability has no merit. The physically disabled persons themselves belong to a particular category. Selection from among them should be based on merit and not on the basis of the severity of the disability which has no nexus with the policy of public appointment. Secondly, the applicant himself was a candidate who appeared in the written test but who could not secure more marks than the 2nd respondent who was finally selected. His contention that the 2nd respondent did not have a disability certificate issued by the competent authority is also absolutely misplaced and it was made without knowing the actual position. Respondent-administration has produced the Disability Certificate issued by the competent authority in his favour.

5. In the above facts and circumstances of the case, we consider that this O.A lacks merit and it is dismissed accordingly. There shall be no order as to costs.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER