

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 379 of 2003

Friday, this the 16th day of July, 2004

CORAM

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. Noorul Hameed,
S/o Aboosala,
Rahmathulla Bhavan, Kilthan Island,
Union Territory of Lakshadweep.Applicant

[By Advocate Shri M.P. Krishnan Nair]

Versus

1. Administrator,
Union Territory of Lakshadweep,
Kavarathi.

2. Director of Fisheries,
Department of Fisheries,
Union Territory of Lakshadweep,
Kavarathi.

3. Anwar Hussain,
Manmel
S/o Cheriyakoya,
Kalpeni Island,
Union Territory of Lakshadweep.Respondents

[By Advocate Shri S. Radhakrishnan (R1&2)]
[By Advocate Shri M.A. Shafik (R3)]

The application having been heard on 1-7-2004, the
Tribunal delivered the following on 16-7-2004:

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The grievance of the applicant is that though he secured first rank in the written test and practical for the post of Mechanic Grade-B, he has been sidelined and the 3rd respondent, who secured only second rank in the written test and practical has been appointed, by the impugned A1 order dated 22-3-2003. He is also aggrieved in filling up only one instead of two vacancies (General seats) in Mechanic Grade-B shown in the notification dated 12-8-2002 inviting applications



for the post of Mechanic Grade-B. The applicant, a permanent resident of Kilthan Island and belongs to Scheduled Tribe, submitted application for the said post and after the written test and practical, a list was published placing the applicant at rank No.1 and the 3rd respondent at rank No.2. In order to give unmerited advantages to the interested persons, the list was not so far published. This Tribunal is requested to call for the records and ascertain the seniority list. Because one of the relatives working in the Office of the Director of Fisheries, Kavarathi the 3rd respondent was considered as No.1. Another notification dated 7-11-2002 (Annexure A3) was issued by the 2nd respondent inviting applications to fill up another post of Mechanic Grade-B in the Department of Fisheries by direct recruitment from among the disabled/handicapped. The number of vacancies is not shown in the said notification and to the best of information nobody was selected from amongst the physically handicapped persons. Vide Annexure A2, two posts were notified, whereas by Annexure A1 the 2nd respondent announced the result of the interview that Shri Anwar Hussain, the 3rd respondent, who ranked second in the written test was declared as Sl.No.1 in the interview and the applicant who got first rank in the written test was declared as Sl.No.2. This is only to favour the 3rd respondent. The 2nd respondent now decided to fill up only one post since the candidates of their choice could not succeed with written test and practical. There are other 'promotion vacancies' in the above department. According to the applicant, apart from the two vacancies notified, there will be further three vacancies on promotion of certain employees. The applicant personally approached and put up his grievances. He was informed that the selection was already over and appointment will be made as per A1. Aggrieved by the said action on the part of the respondents, the applicant has filed this OA seeking the following reliefs:-



- "a) to call for the entire records leading to the Annexure A-1 and all other connected records of the selection and appointment of 3rd respondent as Mechanic Grade B and quash annexure A1 to the extent of placing the 3rd Respondent as serial no.1 and his appointment as Mechanic Grade-B;
- b) to direct the respondent Nos 1 and 2 to cancel the appointment of the 3rd respondent as Mechanic grade B in preference to the applicant and appoint the applicant in his place as Mechanic Grade B in preference to the applicant and appoint the applicant in his place as Mechanic Grade B notified as per Annexure A-2;
- c) To issue a direction to the respondent Nos.1 and 2 to fill up 2 posts of Mechanic Grade B earmarked for general quota, notified in Annexure A2 from the select list prepared on the basis of written test and practical pursuant to Annexure A-2;
- d) to issue direction to the respondent Nos.1 and 2 fill up two vacancies notified and all vacancies arose subsequently in the post of Mechanic Grade B from the select list prepared on the basis of written test and practical pursuant to Annexure A-2."

2. Respondents 1&2 and 3 have separately filed detailed reply statements contending that though the 3rd respondent secured 2nd rank in the written test, his performance in personal interview was better than the applicant and hence he was selected. Only one vacancy is available for general seat even though it was published as 2 in Annexure A2 notification. When the mistake was detected, a separate order was issued by the competent authority reserving one of the above 2 posts for handicapped and consequently Annexure A3 was issued as corrigendum. There is no malafide intention or ulterior motive as alleged by the applicant in the case of selection. There is no question of any seniority list for written test. On the basis of the result of written test, a personal interview was conducted and a rank list was finally drawn. The members of the interview board were qualified and competent. The applicant is the son of an officer of the Fisheries Department. Annexure A3 notification dated 7-11-2002 was intended as a



corrigendum to the notification dated 12-8-2002. But due to an oversight, it was not specifically mentioned that the notice dated 7-11-2002 is a corrigendum. There were only 2 vacancies of Mechanic Grade B identified by the Screening Committee. But later one of these 2 posts was identified for handicapped. Hence, there were only 2 vacancies and not 3 as stated by the applicant. It is true that none of the handicapped candidates qualified in the selection. Only 2 vacancies of Mechanic Grade B were available in the department out of which one vacancy was identified for handicapped as notified by notice dated 7-11-2002, which was corrigendum to the first notice dated 12-8-2002. Therefore, the number of general vacancy was only one and not two as contended by the applicant. The evaluation of the capabilities of the candidates was assessed by a Board and not by single person. The applicant could not secure first position and could not get selected. The allegation against the Board is unwarranted. The 2nd respondent cannot make appointment without a vacancy. No vacancy is available as on date. Only one vacancy was available for general quota and the same was filled accordingly. The selection was purely on the basis of performance. No undue advantage was given to any unmerited candidate on extraneous consideration as alleged. The applicant is making allegation twisting the facts about the possible vacancies in future with malafide intention and also to suit himself to get offer of appointment in the department.

3. The applicant has filed separate rejoinders to the reply statements filed by the respective parties contending that the appointment given to the 3rd respondent is illegal. No credence, value or weightage were given to the marks secured in the written test and practical. Only marks secured in the interview alone was considered. There is every possibility of



manipulation and chance for selecting unmerited candidates, which is clear from the 'absurd' questions asked by the Board members at the time of interview.

4. We have heard Shri M.P.Krishnan Nair, learned counsel for the applicant and Shri S.Radhakrishnan, learned counsel for respondents 1 and 2 as also Shri Shafik MA, learned counsel for the 3rd respondent. Learned counsel had taken us through various pleadings and materials placed on record.

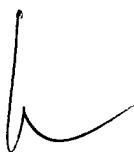
5. Learned counsel for the applicant submitted that he is confident that on perusal of the records the applicant will rank No.1 considering the overall performance in the written test and practical/interview. Apart from that, having notified for 2 posts and the applicant being the 2nd rank holder even according to the respondents, the applicant could have been appointed as per the selection. The contention that subsequent notification dated 7-11-2002 claims to be a corrigendum to the notification dated 12-8-2002 is not correct. The official respondents cannot now claim that this notification is a corrigendum, which will not have a whisper in anywhere on record. Without cancelling the earlier notification a fresh notification cannot be issued for the same vacancy under the guise of a corrigendum. The notification dated 7-11-2002 for handicapped quota is an independent notification, since there were other vacancies and still other vacancies unfilled considered for handicapped quota. In order to deprive the chances of the applicant, the respondents are bringing out a story that this notification is corrigendum with *per se* will not hold good.



6. Learned counsel for the official respondents, on the other hand, submitted that it was true that there is no specific mention of the second notification as it is a corrigendum. It was a mistake committed by the respondents which stands corrected by their action by a fresh notification. The 3rd respondent who has been selected and appointed has contended that the applicant has no claim against the 1st respondent, since the 3rd respondent stood first and all other allegations are only to butter the pleadings in the OA.

7. We have given due consideration to the arguments advanced by the learned counsel on either side. The first part of the claim of the applicant is that as per the written examination the applicant stood first, but in the interview he has been deliberately lowered down and the 3rd respondent was accommodated only to deprive the chance of the applicant. The official respondents have produced the entire records of the selection before this Bench and we have perused the same. On going through the records and the proceedings thereon, we are convinced that a Board consists of competent persons had evaluated the merit in the written test followed by an interview of the general as well as handicapped candidates. There are 66 candidates registered for general quota and 2 candidates registered for handicapped quota and all the candidates appeared for the test. 14 candidates who secured highest marks in the written test were called for personal interview on 6-3-2003. On the basis of the marks secured in the written test, practical and personal interview, the following candidates are listed as per their merit:-

1. Shri Anwer Hussain, Mammel, S/o Cheriyakoya
2. Shri Noorul Hameed, Rahmathulla Bhavan S/o Aboosala
3. Shri Dasthakeer V, Vadakkaroda, S/o Ahamed Kunhi



Shri Anwer Hussain, the 3rd respondent, who secured first rank is selected for consideration and the applicant is kept as an alternate for consideration in case the candidate selected as above did not accept the appointment. Then the two handicapped candidates appeared for written test were called for personal interview on 6-3-2003, but none of them are found qualified for selection. On going through the proceedings, we are convinced that there is no malafide, bias or nepotism involved in the selection and therefore, the selection process cannot be faulted, as alleged in the OA. It is borne out of records/selection proceedings that the committee adverted to the relevant facts and circumstances and the assessment was made in bonafide exercise of power with reference to relevant and ascertainable standards. Therefore, the challenge of the non-selection of the applicant on that ground is rejected.

8. Learned counsel for the respondents through their notes of argument brought to our notice the following decisions:-

1. Chandra Prakash Tiwary vs. Shakuntala Shukla [(2002) 6 SCC 127] - The subject matter of the said decision is having participated in the selection, one cannot turn round and challenge the selection only because the result is not palatable to him.
2. All India SC and ST Employees Assocn. vs. Arthur Jeen [(2001) 6 SCC 380] - Merely because the names of the candidates were included in the panel, they will not acquire any indefeasible right for appointment.
3. Vinodan T. vs. University of Calicut [(2002) 4 SCC 726] - Persons merely selected for a post do not thereby acquire a right to be appointed to such posts.
4. S.Renuka vs. State of A.P. [(2002) 5 SCC 195] - No right accrues to a person merely because his name is in the panel.
5. Kerala Agricultural University vs. Gopinathan Unnithan [1996 (1) KLT 344] - The court cannot issue a Writ of Mandamus directing appointment of a candidate who is included in the select list.



We have gone through the decisions and we are in respectful agreement with the dictum laid down by the Apex Court. Since this Court has rejected the claim challenging the selection, what survives is the issue regarding the legality of Annexure A3 notification. Respondents have no case that there is no vacancy. Therefore, these decisions are not applicable in the given case.

9. The next limb of the argument advanced is that originally as per Annexure A2 notification dated 12-8-2002, the post notified was 2. For better elucidation the operative portion of Annexure A2 notification is reproduced as under:-

"F.No.10/20/2000-FY(4)

Dated: 12-08-2002

NOTICE

Applications to fill up the following posts in the Department of Fisheries, Union Territory of Lakshadweep by direct recruitment are invited by the undersigned from the eligible candidates. The qualifications and age as per the Recruitment Rule are as given below:

1. **Mechanic Grade-B** Qualifications:
(2 Post): 1. SSLC or equivalent from a recognised Board/University.

2. ITI certificate in one of the following:
(a) Turner
(b) Fitter
(c) Mechanist
(d) Blacksmithy
(e) General mechanics
(f) Tool maker
(g) Welder cum fitter
(h) Marine mechanic
(i) Motor mechanic
(j) Diesel mechanic
OR
Certificate holder of the Shore Mechanic Course of CIFNET or the service mechanic course of Indo Norwegian Project.
Age-25 years relaxable to SC/ST candidates as permissible."



In furtherance of this notification, 65 persons qualified including the applicant and the 3rd respondent applied for the same. The official respondents have no case that there is no vacancy that is in existence. At the time of this notification invariably two vacancies were available and in the normal course the selection would have been done and the applicant who is rank No.2, who is now wait listed for want of alleged vacancy, could have been selected. But, by the intervention of Annexure A3 notification dated 7-11-2002, which was notified for the same post for direct recruitment from disabled/handicapped persons as per Recruitment Rules, the qualification prescribed for item No.2 Mechanical Grade-B is one and the same as that in Annexure A2. But, Annexure A3 notification does not indicate as to how many vacancies are to be considered in the disabled/handicapped persons. The contention of the respondents is that it is for one vacancy and it is a corrigendum to the earlier notification does not find a place in the said notice and the further argument that it is an omission/mistake on the part of the respondents that they did not mention the word 'corrigendum' in Annexure A3 cannot be seen as a minor lapse.

10. We have perused the selection records produced before us and found that Mechanic Grade-B are technical persons who are to carry out the works in the workshop and in page 57 of the relevant file it is noted that if these posts are not filled up, it will affect the work of annual maintenance and repair of the engines of mechanized fishing boats, which may ultimately affect the fishing itself. The note further goes to say on the question of vacancy that:

"Besides the above three posts already fell vacant, another 3 posts of Mechanic Grade-B in the same pay scale are also anticipated to fall vacant by promotion



of the incumbents to the posts of Junior Engineer and Mechanic Grade-A during the current year 2002-2003"

11. The selection is dated 1-2-2003. So the selection is only for the current year 2002-2003. ~~Administratively~~, there are 3 posts already fell vacant and another 3 posts anticipated. Therefore, the contention of the respondents in the given conduct and circumstances to the effect that the 2 posts was inadvertently notified in Annexure A2 notice as '2' cannot stand hold good. The administrative action always must be studious in earmarking the reserved quota vacancies well in advance like handicapped quota, scheduled caste/tribe quota etc. which also seems to have been suggested while the Administrator recommended to the Director of Fisheries vide letter No. 1/14/2002-SS(cc)(7) dated 24-7-2002 to suggest the screening committee for consideration to fill up 6 posts and the letter dated 22-7-2002 on the same subject by the Secretary (Administration) (page 61 of the file), wherein for Mechanic Grade-B, two vacancies has been mentioned to have cleared for recruitment by the committee and there is no whisper of handicapped quota. Even assuming the argument of the respondents that in the notice dated 7-11-2002 (Annexure A3) the number of posts is not mentioned is an omission and assuming that it is for one post, prior to the notification of Annexure A2 no proceedings or decision has been taken to earmark the same for handicapped quota. We are also not happy how this selection of general candidate and handicapped quota adopting the same standard of selection is being adopted by the process. Handicapped persons may not be as competent as of the general candidates. So, there should have relaxed standard prescribed for them. But, it appears that the selection committee has clubbed these two categories together and selection has been finalised and found that no handicapped persons are found fit for the selection process. This resulted

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in deprivation of the chances to a general quota candidate, though they could not find anyone fit in the handicapped quota. The factual position being so, we have no reason as per the records or materials placed before us to justify and substantiate the contention of the respondents that one vacancy is earmarked for handicapped person and Annexure A3 is a corrigendum to Annexure A2 notice. According to us, Annexure A2 notification and Annexure A3 notification are separate in its entity and character and the standard of selection also should have been different. Therefore, it cannot be linked together. This is also not borne out of records. Had one post been reserved for handicapped quota, the respondents would have taken steps much earlier and obtain sanction from the concerned authorities well in advance, which is not done in this case. Therefore, this measure is adopted only to fill up their lacuna as an after thought. We have no hesitation in declaring that Annexure A3 is not a corrigendum to Annexure A2 notice and since the applicant being the 2nd rank holder in the selection and two posts has already been notified for general candidates, the applicant should have been given a post. Since the vacancy is not already filled up and since the applicant is the second in the meritorious list as per due process of selection, we direct the respondents to take appropriate steps in giving an appointment to the applicant to the said post. We also make it clear that the existing vacancy, if any, or the next ensuing vacancy can be earmarked for handicapped quota for which appropriate proceedings may be initiated as per rules by the respondents, if they so wish/decide.

12. In the conspectus of facts and circumstances, we set aside Annexure A1 dated 22-3-2003 to the extent that the applicant being considered only as an alternate candidate and direct that the applicant be declared as selected candidate in



second rank for the post of Mechanic Grade-B (general quota) and be given posting in the existing vacancy/post as per A2 notification, forthwith. However, as far as the position of the 3rd respondent is concerned, it stands undisturbed and will be rank No.1. We direct the respondents to pass appropriate orders and to complete the entire exercise within a month from the date of receipt of a copy of this order.

13. The Original Application is allowed as above. In the circumstances, no order as to costs.

Friday, this the 16th day of July, 2004

H. P. Das
ADMINISTRATIVE MEMBER

K. V. SACHIDANANDAN
JUDICIAL MEMBER