

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHORIGINAL APPLICATION NO. 397 of 2012

Tues day this the *11th* day of August, 2015
CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mr.P. Gopinath, Administrative Member

Jaferkhan P.V. S/o Attakoya Haji,
aged 40 years, residing permanently at Pantam veli House, Kiltan Island,
working as Constable, Indian Reserve Bettalion.

...Applicant

[By Advocate Mr. M.R. Hariraj)

Versus

1. Union of India, represented by Secretary the, Secretary, Ministry of Home Affairs, New Delhi-110 001.
2. Administrator, Union Territory of Lakshadweep Kavarathi.
3. The Director of Fisheries, Union Territory of Lakshadweep, Kavarathi.
4. Siddeeque S/o Ali Kunnuge, Aoubukarugothi, Sedivalu Village, Minicoy.
5. Muzammil P.P S/o Koyamma M.I, Pallipuram House, Kavarathi.
6. The Director, Central Institute of Fisheries Nautical Engineering and Training (CIFNET), Kochi-682016..

....Respondents

[By Advocate Mr. N.Anil Kumar, Sr.P.C.G.C for R.1
Advocate Mr. S. Radhakrishnan for R. 2&3
Advocate Mr. R. Rohith for R 4&5
None for R.6]

This application having been finally heard on 03.08.2015, the Tribunal on 11.08.2015 delivered the following

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

Applicant seeks quashment of Annexure.A1 order of appointment of the 4th and 5th respondents to the post of Engine Driver. He further seeks a declaration that he is entitled to be considered for appointment to that post based on his merit and for appropriate consequential reliefs.

2. The case of the applicant is stated as follows.
 - 2.1 The applicant was a regular sea going fisherman The post of Engine Driver was notified with other posts as per Annexure. A 4 notification. As per Annexure A.4 notification the qualification demanded was SSLC or equivalent and pass certificate of Engine Driver Fishing Vessel/Marine Fitter course from a recognized institute or equivalent. The applicant passed SSLC examination with 50.17 percentage of marks. As per Annexure. A5 certificate it is clear that the applicant had experience in 108 BHP Vessel for one year. Hence the applicant was fully qualified as per the rules and the notification for the post aforesaid. The check list of the candidates who had applied for the post was published as per Annexure.A6. No mark list for 18 months course of Engine Driver was produced by the applicant along with the application. In Annexure A6, only the Matriculation or SSLC marks were considered. The applicant is a person having maximum marks among the candidates who had applied for the post. The applicant attempted to get a mark list in respect of the Engine Driver course in respect of which he had obtained certificate, but he was

informed that there is no procedure of issuing mark list in the said course (vide Annexure. A7). In the light of Annexure.A7 the applicant requested that the selection may be based on merit of SSLC as one of the course indicated in the qualification which has got mark list. Annexure A9 a detailed representation was submitted by him requesting that he may be granted a posting order. Another representation was also filed. Annexure A1 impugned order was passed selecting Respondents .4 and R5 as Engine Drivers. They were given undue weightage for the marks obtained in the marine fitter course undertaken by them. The respondents have not stated reason for preferring Respondents 4 and 5 From Annexure.R.2 © it is seen that the official respondents have added the marks in SSLC and EDFVC/MFC and respondents 4 and 5 were given weightage for the same in the selection. But the respondents presumed that the applicant has got only minimum pass mark in the examination in EDFVC course. The absence of the mark list is not for any reason attributable to the applicant. There is no justification to presume that the applicant has got only minimum pass mark in the EDFVC course. Though the 4th respondent is granted marks for experience qualification that is not shown in the check list. So it is evident that it was granted based on subsequent production of certificate/credentials. Annexure.A1 order and other orders passed by the respondents are violative of natural justice. Hence the applicant seeks to set aside Annexure.A1 and for an order of appointment to the applicant to the post of Engine Driver.

3. Respondents 2 &3 filed reply statement contending as follows.

3.1 The methodology adopted for selection to the post under the UT Administration cannot be questioned by contending that the mark list was never asked for the Engine Driver post. The applicant had produced the mark list of SSLC and as such it is clear that the production of mark list was mandatory for the selection. It was the obligation of the applicant to produce all the relevant documents as required under the notification. The pass certificate of EDFVC of CIFNET merely qualifies to appear for competency examination of MMD and not for selection to the post of Engine Driver. The contention that a candidate who has a pass certificate should be given 100% marks is an absurd proposition. As the applicant did not produce the Mark list and the selection was purely based on academic merit it cannot be presumed that the applicant had passed the exam with 100% marks in all the subjects. The applicant after completing the course in 1996 passed the final examination only in September/October, 2002. Thereafter, he approached the institution for mark list only in 2010. Had the applicant approached the institute he could have obtained the mark list then and there. As such the plea raised by the applicant cannot be sustained. The maximum marks for SSLC is 600; for EDFVC and Marine Fitter Course is 900 and 700 respectively. The aggregate maximum marks in the case of the applicant is 1500 whereas that of the Respondents 4&5 is 1300. Both qualifications are essential for the post of Engine Driver. Hence equal weightage was

given to both. It was fair and unbiased. For the reason that the content and manner of valuation of EDFVC and Marine Fitter course are different, the selection process of UTL administration cannot be changed. EDFVC is 18 months course whereas MFC course is only a course of 2 months duration. On the introduction of MFC in 2006 EDFVC course was stopped by CIFNET. MFC is a recognized course of DGE&T but EDFVC is not. To accommodate the candidate possessing EDFVC qualification recruitment rules of the department was framed and so equal weightage was given for both the examination in the selection process. The contention that selection process amounts to treating equals as unequals and there is violation of Articles 14 and 16 of the Constitution is unsustainable. Check list is not a selection list but merely a list of candidates applied for the post. The plea that as the marks of experience of Respondents 4 and 5 was not in the check list the selection list is to be set aside is untenable. The applicant's experience was also not reflected in the check list nor of other candidates. In overall grading the applicant was behind Respondent Nos.4 and 5. The applicant could not produce the mark list of EDFVC course. Check list is not a selection list and is merely an information of the candidates applied for the post. Selection of the candidates by the committee was done after thorough evaluation of the candidature of all the candidates eligible for the post as per the Recruitment Rules. The selection was transparent and clear. As such respondents prayed for dismissal of the application.

4. The points for consideration are whether Annexure.A1

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appointment of Respondents 4&5 to the post of Engine Driver Marine Fishing Vessel is liable to be quashed on any of the grounds urged by the applicant and whether the applicant is to be appointed for that post?

5. We have heard the learned counsel appearing on both sides and also gone through the pleadings and documents.

6. Annexure. R2 (a) is the notification pertaining to three posts of Engine Drivers in respect of which the notification was issued. Column 8 therein shows the educational qualifications and other qualification prescribed for direct recruits. The essentials are:

8. Educational and other qualification prescribed for the direct recruits:

Essential: 1. SSLC or equivalent
2. Pass Certificate of Engine Driver Fishing Vessel/Marine Fitter course from a recognised institute or equivalent.

Desirable: Competency certificate 2nd Class Motor Engine Driver of MMD or 6 months (180 days) experience in the Engine Room of Motor Vessel having engine of not less than 85 BHP or 9 months (270 propulsion days) experience in the engine room of a vessel not less than 40 BHP.

It is stated that out of the 100 marks 85% of the total marks was for the essential qualifications whereas 15% of the marks was one assigned to desirable qualification as can be seen from column 8 of R.2 (a) and Annexure R.2(b) also. It is vehemently argued by the learned counsel for the applicant that in the check list published by the respondents the marks secured by the 4th and 5th respondents and also by the applicant for the other qualifications in respect of which

certificates have been produced have not been shown. The official respondents have clearly stated that the check list is not the final list. It is further contended that as per the check list only statement of candidature of eligible and ineligible candidates applied for the post are published after screening the applications received for the post showing the reason for non eligibility of the candidates if any. Sufficient time was also given to the candidate to prove their eligibility if there was any mistake in the screening of the candidature in the check list. Therefore, the argument advanced by the learned counsel for the applicant based on the check list is found to be untenable. It is not a case where the marks obtained by the candidates for the certificate courses referred to in Column 8 of Annexure. R.2(a) were given to some of the candidates but it was omitted to be shown to other candidates. In other words, it is only a statement of the candidature of the applications received for the post. It was in the final list prepared for that purpose the marks obtained on each count by each of the candidates has been specifically noted.

7. Annexure A3 is the certificate dated 21.8.2003 issued by the CIFNET where it was stated that the applicant had undergone training in Engine Driver Fishing Vessel Course of 18 months duration from August, 1994 to February, 1996 at the Institutes HQ at Cochin. So many subjects in respect of which the course was undergone are also mentioned there. The last portion of that certificate shows that the eligibility of the applicant was examined by duly appointed examiners and that they had declared the applicant as passed in the final

examination held in September/October, 2002. The learned counsel for the official respondents would submit that for a course of 18 months from Aug. 1994 to Feb. 1996 the applicant could get through only in September/October, 2002 after about six years. Since the applicant did not produce the mark list along with the application as required under the notification, the respondents took the minimum mark; 40%. According to the applicant there is no reasonable basis for awarding only 40%; instead he could have been awarded 100% marks also; a plea too preposterous to be countenanced. There is no merit in that contention. The applicant was obliged to get the mark list from the department concerned and produce the same. Only because the mark list was applied for in 2012 the mark list could not be given to the applicant as it was not available. Since the final examination was held in September/October, 2002 and since the mark list was not available when applied for in 2010 there it was not given. It is not a case where the mark list was not given at all to anybody for the examinations conducted by the department concerned. Therefore, the contention that the applicant should have been given 100% marks instead of 40% marks is bereft of any merit. Only because the applicant failed to produce the mark list of the course covered by Annexure.A3 certificate he was given the minimum pass mark. The experience acquired by the applicant and the certificate produced by him was given due weightage by the selection committee.

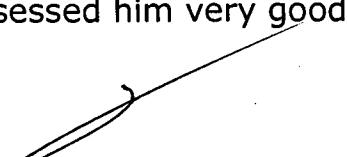
8. After the check list was published there was sufficient time for the applicant to get the mark list and to produce the same. Now it

is contended that though he had applied for the same, he could not get it. Annexure.A7 has been pressed into service by the applicant which was given to the applicant on 5.4.2011. It shows that the applicant had made a request for the mark list of EDFVC/MFVC on 13.12.2010. The applicant was informed that Engine Driver Fishing Vessel Course (EDFVC) was a certificate course conducted by the CIFNETT to cater the man power requirements of deep sea fishing industry and not recognized by DGET or Ministry of Education or AICTE. It was further stated therein that the competency examination will be conducted by Mercantile Marine Department who is the authority to conduct the competency examination for which the mark list is not required. Only pass certificate is essential. So CIFNET was issuing only pass certificate to candidates who have successfully completed the Engine Driver Fishing Vessel Course. It was further stated that since CIFNET was not issuing mark list all these years there was no proper procedure to preserve the marks scored by the individual candidate. Therefore, according to the respondents it is not a case where the marks scored by the candidates who had undergone that course was not maintained at all but because it was not applied for at the relevant time and since it was not preserved, the authority expressed their helplessness to provide the mark list. That will not help the applicant to contend that he should be awarded 100% marks for the course underwent by him as evidenced by Annexue. A3.

9. Now the contention raised by the applicant is that since he had secured more marks in SSLC which was the educational

qualification required he should have been selected and ignoring the course which was made mention of in the recruitment rules and notification. There is no merit in that contention as well. Once the essential qualification has been prescribed the applicant who had applied for and taken part in the interview cannot later turned round and contend that the selection process should have been based only on the marks secured by the candidates in the SSLC examination and that no marks should be provided for the experience or for other essential courses required for the post.

10. The applicant also wanted to contend that Annexure.A11 certificate produced as Annexure.R.5 was issued only in 2011; that too for the course he had undergone from 2003 to 2004. It was issued by a private party. But the selection committee found it acceptable. There is no reason to hold that the committee members committed illegality in accepting the same. Annexure.A.11 is only a certificate in respect of desirable qualification and not in respect of an essential qualification. Annexure. A.11. shows that the applicant had worked as Engine Diver Assistant for one years from 2003 to 2004 in his vessel, name of which is mentioned in that certificate. Annexure. A13 is a certificate issued to the 4th respondent. That was issued by the Dy. Director, CIFNET. It was certified therein that the 4th respondent was under his supervision on board the vessel MV Skipper-II from 18.10.2010 to 10.5.2011 as Engine Room Assistant. The actual day the Respondent No.4 spent at sea was noted as 105 days. The Chief Engineer who issued the certificate assessed him very good during the period.



11. It is a case where admittedly the applicant did not produce the mark list as required under Annexure.R.2(a). The second essential is pass certificate Engine Driver Fishing Vessel/Marine Fitter course from a recognized institute or equivalent. Competency certificate second class motor engine diver MMD or six months experience in the engine room of motor vessel etc. comes only in the desirable portion. When the second essential pre-requisite is pass certificate of Engine Driver Fishing Vessel/Marine Fitter Course from a recognized institute or equivalent the applicant cannot successfully contend that the marks secured by him in the SSLC alone should be considered nor can he assail the appointment of Respondents 4 and R 5 contending that he (applicant) should have been given 100% marks for the certificate he had obtained as evidenced by Annexure. A3. Since the applicant did not produce the mark list he cannot now contend that awarding of 40% marks being the minimum given to him should not be accepted.

12. Annexure.A4 recruitment notification makes it clear that application in the prescribed form along with attested copies of certificate, mark list, proof of age, educational qualification, caste certificate, experience etc. should be sent to the Director of Fisheries, UT of Lakshadweep to reach on or before 30.4.2011 at 5 pm. It is also stated that incomplete applications received after due date and time will not be entertained. Therefore, according to Respondents in fact for non production of the mark list as required by Annexure.A4 alone his application should have been rejected. Be that as it may, Annexure.A4 directs that the applicant should produce

certificate/mark lists as mentioned above. Hence he cannot rest content saying that the percentage should have been computed on the basis of marks he secured in the SLLC examination alone. That would be in violation of Annexure.A4 and other documents referred to above. The applicant cannot command the selection committee to have an assumption that the marks obtained by him in the course covered by Annexure.A3 might have been much more than 40%. No decision can be based on such hypothetical contentions.

13. It is pointed out by the respondents that even ignoring 15% of the total marks given to the respondents 4&5 for acquiring desirable qualification still they are far above the applicant. There is no illegality in the selection process undertaken by the respondents or in appointing respondents 4 and 5 to the post of Engine Driver. Tribunal cannot sit in judgment over the process of selection based on which they selected Respondents 4 and 5. That is purely within the domain of the selection committee. There is no act of malafides or illegality in it. The selection committee was chaired by the Secretary (Fisheries) and other responsible officers. There is nothing to show that the recruitment rules or norms was violated while selecting Respondents 4 and 5 and appointing them as Engine Drivers. There is no merit in this OA. It is hence dismissed. No order as to costs.



P. Gopinath)
Administrative Member

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(N.K. Balakrishnan)
Judicial Member