

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.397/2002 and 398/2002.

CORAM:

Tuesday this the 27th day of August, 2002.

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

O.A.397/92

Melapandaram Shahitha
D/o Abdul Rahiman, Agathi Island,
Union Territory of Lakshadweep.

Applicant

(By Advocate Shri P.V.Mohanan)

Vs.

1. Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. The Superintending Engineer,
Lakshadweep Public Works Department,
Kavarathi, Union Territory of
Lakshadweep, Kavaratti.
3. Faisal F.M.,
Kadamath Island,
Union Territory of Lakshadweep.
3. Mohammed Kasim Ubaivulla P.P.,
Kadamath Island,
Union Territory of Lakshadweep.
5. Sadique Ali O.A.,
Amini Island,
Union Territory of Lakshadweep.
6. Mohammed Irshad Khan,
Akkara, Kalpeni Island,
Union Territory of Lakshadweep.
7. Saleem Khan A.P.,
Agathi Island,
Union Territory of Lakshadweep. Respondents

(By Advocate Shri P.R.Ramachandra Menon (R.1&2)
(By Advocate Smt. V.P.Seemanthini (R.3 to 6)
(By Advocate Smt. V.P.Seemanthini & P.S.Divakaran(R-7)

O.A.398/02:

Firose A. Manikfan,
Alibeg, South Pandaram,
Minicoy Island,
Union Territory of Lakshadweep. Applicant

(By Advocate Shri T.H.Abdul Azeez)

Vs.

1. The Administrator,
Union Territory of Lakshadweep.
2. The Superintending Engineer,
Lakshadweep Public Works Department,
Kavarathi, Union Territory of
Lakshadweep.
3. Faisal F.M.,
Kadamath Island,
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4. Mohammed Kasim Ubaivulla P.P.,
Kadamath Island,
Union Territory of Lakshadweep.
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Amini Island,
Union Territory of Lakshadweep.
6. Mohammed Irshad Khan,
Akkara, Kalpeni Island,
Union Territory of Lakshadweep.
7. Saleem Khan A.P.,
Agathi Island,
Union Territory of Lakshadweep. Respondents

(By Advocate Shri P.R.Ramachandra Menon (R1&2)

(By Advocate Smt. V.P.Seemanthini and Mr. P.S.Divakaran(R.3-7)

The application having been heard on 27th August, 2002
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

As the subject matter of dispute in both these cases is,
the panel prepared on 28.5.02 for appointment to the post of
Junior Engineer in Lakshadweep P.W.D. based on the
test/interview held on 28.5.02, these two cases are being heard
and disposed of by this common order.

2. The Superintending Engineer, PWD, Lakshadweep issued a
notification (A-1) calling for applications from the eligible and

willing local candidates for appointment to the post of Junior Engineer in the scale of Rs. 5000-8000 by direct recruitment.

3. The applicants in these two cases applied in response to the above notification. The applicant in O.A. 397/02 got A-2 call letter dated 7.5.02 and the applicant in O.A.398/02 got A-3 call letter of the same date. The contents of A-2 and A-3, the call letters addressed to the Assistant Engineer (Civil) , Agathi and Assistant Engineer (Civil) Minicoy respectively by the Superintending Engineer, Kavaratti, reads as follows:

"Kindly direct the following candidates to appear for an interview for the post of Junior Engineer Civil with all documents in original at PWD Circle Office at 10'0 clock on 28.5.2002."

4. When the applicants in these cases reported pursuant to the call letter at the PWD Circle Office they were surprised to find that they were asked to appear for written test of which they were not notified earlier. However, they participated in the written test of 90 minutes duration which ended at 12.30 p.m. on 28.5.2002. Interview was held on the same date at 2.30 p.m. and to their dismay the impugned panel A-1 in O.A.397/02 and A-4 in O.A.398/02 was put on the notice board placing the names of respondents 3 to 7 on the same date. The applicant in O.A.397/02 on the next date made a representation to the first respondent, Administrator, Union Territory of Lakshadweep, stating that there was foul play in the selection and requesting him to look into the matter. The applicants finding that the selection has not been held in accordance with the notified procedure and that they have been put to prejudice on account of want of notice regarding

written test, filed this application seeking to set aside the impugned panel and for a direction to the respondents 1 and 2 to conduct a fresh selection to the post of Junior Engineer in Lakshadweep PWD. It has been alleged in the application that there has been leakage of question papers and malpractice and nepotism in the process of selection and therefore, the selection process being vitiated, the outcome thereof is liable to be set aside.

5. The 2nd respondent Superintending Engineer in his reply statement contend that, the fact that a written test would be held was published in the notice board of the PWD Circle office on 25.5.2002 and that therefore, the contention of the applicants that they were not notified of holding the written test is not correct. It has further been contended that the test having been held in accordance with the rules and as there has not been any malpractice or favouritism shown to anybody, judicial intervention with the panel is not called for. The first respondent, Administrator, in the reply statement filed in both these cases has stated that, on receipt of the representation from the applicant in O.A.398/02 he asked the Secretary (Works) to look into the matter and submit a report. Respondents 3 to 7 in their reply statement seek to justify the panel on the ground that the applicants who participated in the written test are estopped from challenging it and that due notice of written test as per practice has been given to all. The applicant in O.A.397/02 has filed a rejoinder refuting the averments that, in the notice board of the PWD Circle office a notice regarding written test was published. In order to demonstrate that this

contention of the respondents was wrong, A-5 letter dated 27.5.2002 by which the 2nd respondent has called upon one K.P.Kamaludheen to appear for interview on 28th and 29th May, 2002 at 10'o clock, pursuant to the interim order passed by the Tribunal in O.A.349/02 dated 27.5.2002 has been produced. In this letter which was issued on 27.5.02, no mention was made of the written test.

6. We have carefully gone through the pleadings as also the other materials which are brought on record and have heard Shri P.V.Mohanan learned counsel of the applicant in O.A.397/02 and Mr.T.H.Abdul Azeez, learned counsel for the applicant in O.A.398/02 and Mr. P.R.Ramachandra Menon learned counsel for respondents 1 & 2 and Smt. V.P.Seemanthini learned counsel for the respondents 3 to 7 in both these cases. The sole question that calls for answer in these cases is whether the impugned panel is the product of a proper and valid selection or whether the panel is vitiated for irregularity which goes at the root of the selection. Learned counsel of the applicant with considerable force and tenacity argued that the holding of written test where no such test was notified and where the applicants had been alerted only of an interview to be held on 28.5.2002, is irregular and has caused substantial prejudice to the applicant for they could not go prepared to face the written test. It is further argued that the holding of a written test which was not programmed earlier was motivated probably with a view to favour the selected candidates.

7. Shri P.V.Mohanan learned counsel of the applicant in O.A.397/02 argued that in view of the letter written by the 2nd

respondent to Kamaludheen on 27.5.2002 (A5) the contention of the 2nd respondent that on the notice board of the Circle Office, PWD, Kavaratti, the annexure R-1 was exhibited cannot be believed. He argued that the Annexure R-1 is a concocted one. In Annexure A-5 communication addressed to Shri Kamaludheen, pursuant to the interim order of the Tribunal in O.A.349/02, issued only on 27.5.2002. Shri Kamaludheen was not notified of the written test. If as a matter of fact on 25.5.2002 the notification regarding written test was published normally this should have been indicated in A-5, which was issued only later i.e. on 27.5.2002. The argument of Shri P.V.Mohanan that Annexure R-1 appears to be manipulated cannot be said to be without force.

8. If as a part of the process of selection, the respondents 1 and 2 had decided to hold written test and then an interview, in the call letter it should have been stated that there would a written test at first which would be followed by an interview. From the call letter it is not seen that there is any mention about the written test and the candidates were called only for interview. In the statement filed by the first respondent, Administarator, it has not been stated that always a written test used to be held before interview for selection to the post of Junior Engineer and that the practice followed was allerting the candidates only for interview. Who took a decision to hold the written test, at what point of time it was taken, is not made clear in the reply statement filed on behalf of the respondents. The respondents 3 to 7 in their reply statement have contended that the practice in the Lakshadweep Administration was to notify

only the interview and to hold a written test as also the interview on the same date. This contention does not sound convincing. Even if that had been the practice, it is not a healthy practice. If there would be a written test in the process of selection, it should be notified and the subjects on which the candidates are to write in written test should also be specified. Then only the intending candidate can prepare and make effective attempts.

9. It is also seen that the written test, interview and the final selection had all been done in the course of a few hours, which also make the whole affair highly suspicious.

10. Smt. Seemanthini, learned counsel of respondents 3 to 7 took a legal contention that the applicants in these cases having submitted themselves for written test and interview held without any demer cannot be permitted to challenge the process finding that they did not come out successful. To buttress this argument, learned counsel referred to us the ruling of the Apex Court in Madanlal Vs. Jammu & Kashmir (1995 3 SCC 486). We find that the facts of the case under citation and the facts of the cases at hand are not similar. In the case under citation the test had been notified. In the cases on hand the applicants were notified only of an interview and they were asked to appear for a written test without any prior intimation. The fact that they ^{appeared} when asked to appear in a written test does not debar them from challenging the process of selection. The applicants who were job seekers had no option but to appear in the written test when a written test was held. The Apex Court in Rajkumar Vs.

Sakthiraj (AIR 1997 SC 2110) has distinguished the decision in Madanlal's case and held that where there is a grave procedural irregularity in holding of the test, the candidates participated in the test cannot not estopped from challenging the selection.

11. In the light of the above discussion, we find that the applicant in both these cases are bound to succeed and the impugned panels in these cases are liable to be set aside. Therefore, we allow this application, set aside the select panel dated 28.5.2002 (A1 in O.A.397/02 and A7 in O.A.398/02 and direct the respondents to hold a fresh selection to the posts of Junior Engineer in Lakshadweep PWD notified by A-1. There is no order as to costs.

Sd/-
(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

Sd/-
(A.V.HARIDASAN)
VICE CHAIRMAN

List of annexures:

OA 397/2002 & 398/2002

OA: 397/2002:

Applicant's annexures:

Annexure.A1: True copy of the Notification No.11/480/2001-CI dated Nil by the 2nd respondent.

Annexure.A2: True copy of the intimation dated 7.5.2002 vide No.1/1/9206/2001-CI by the 2nd respondent.

Annexure.A3: True copy of the question paper.

Annexure.A4: True copy of the Office Order No.F.No.1/1/900/2001-CI dated 28.5.2002 by the 2nd respondent.

Respondents' Annexures:

Annexure.R6(a): True copy of the Notice dated 25.5.02 published in the office of the Superintending Engineer, at Kavaratti.

Annexure.R6(b): True copy of the Office Memorandum No.F.No.18/61/2000-Edn.(Estt) (1) dat.7.1.2001.

Applicant's Annexure:

Annexure.A5: True copy of Office Memorandum No.F.1/1/896/2001-CI dated 27.5.2002 issued by the 2nd respondent.

OA:398/2002:

Applicant's annexure:

Annexure.A1: True photo copy of the certificate awarding the degree of Bachelor of Enginjeering of Bharathidasan University in the Brnach of Civil Engineering to the applicant.

Annexure.A2: True copy of notification No.1/480/2001 by the Superintending Engineer inviting application for selection to the post of Junior Engineer.

Annexure.A3: True copy of intimation No.1/1/756/2001-CI dated 7.5.2002 of the Superintending Engineer, Kavaratti.

Annexure.A4: True copy of the office Order No.1/1/900/2001-CI dated 28.5.2002 by the 2nd respondent.

Annexure.A5: True photo copy of representation filed byt the applicant to the ist respondent dated 29.5.2002.

Respondents' annexure:

Annexure.R6(a): True copy of Office Memorandum issued by the Administrative Officer of Directorate of Education.

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