

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.181/00084/2014

Friday, this the 23rd day of February, 2018

CORAM:

Hon'ble Mr.U.Sarathchandran, Judicial Member
Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Shajahan K.K.,
S/o. Sayed Mohammed P.K., Aged 27 years,
residing at Kolikothiyoda,
Union Territory of Lakshadweep, Amini – 682 552.

..... **Applicant**

(By Advocate – Mr. N. Unnikrishnan)

V e r s u s

1. Union of India represented by the
Secretary to the Government of India,
Ministry of Personnel and Public Grievances,
Department of Personnel and Training,
New Delhi – 110 001.
2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.
3. The Director (Services),
Administration of the Union Territory of Lakshadweep,
Secretariat, Kavaratti – 682 555.
4. The Secretary (Administration),
Union Territory of Lakshadweep, Secretariat,
Kavaratti – 682 555.
5. The Director
(Department of Port, Shipping & Aviation),
Administration of the Union Territory of Lakshadweep,
Kavaratti – 682 555.
6. Shri. Shaik Abdulla, K.
Aged 32 years, residing at Koormel House,
Amini – 682 552.

..... **Respondents**

**(By Advocates – Mr. Anil Ravi (R-1) (no representation)
 Mr. S. Manu (R2 to R5)
 Mr. Saiby Jose Kidangoors (R-6) &
 Mr. Mohammed Salih P.M. (No representation))**

This Original Application having been heard on 15.02.2018, the Tribunal on 23.2.2018 delivered the following:

ORDER

Per: E.K. Bharat Bhushan, Administrative Member

O.A No. 84 of 2014 is filed by Shri Shajahan K.K, aggrieved by Office Order No.1/5/2013-Part (OP) dated 18.2.2014 issued by the 5th respondent (Annexure A7) vide which the eligible candidates for the post of Crane Operator and Forklift Operator were directed to appear for a practical trade test at Kavaratti on 28.2.2014. He has also challenged the Select List issued vide F.No.1/15/2013-Port (Estt) dated 5.9.2014 (Annexure A8) by the respondents selecting Shri Shaik Abdulla K as Crane Operator.

The reliefs sought in the O.A are as under:

- (i) Call for the records leading to the Annexures A7 and A8*
- (ii) Declare that Annexures A7 in so far as Selection of 6th respondent is concerned and A8 are unsustainable.*
- (iii) Issue appropriate order or direction quashing Annexure A7 in so far as selection of 6th respondent is concerned and A8*
- (iv) Declare that the applicant has superior claim over the 6th respondent and is entitled to be appointed as Crane Operator pursuant to Annexure A1 notification without further loss of time.*
- (v) Issue appropriate order or direction to 5th respondent to issue necessary orders appointing the applicant to the post of Crane Operator as per Annexure A1 notification within a reasonable time.*
- (vi) Issue such other appropriate orders or directions as this Hon'ble Tribunal may deem fit just and necessary; and*

(vii) To grant cost of this Original Application.

2. The brief facts of the case are as under:

The 5th respondent, vide notification No.1/5/2013-Port (Estt) dated 25.11.2013 (Annexure A1) had invited applications for appointment to 2 posts of Crane Operators, among other categories, on a consolidated payment of Rs. 12,000/- per month. Necessary qualification prescribed were, pass in SSLC with a valid licence for operating Cranes, along with proof of two years experience in Crane Operation. The applicant being eligible to apply, submitted his application producing a copy of the Secondary School Leaving Certificate (Annexure A2), a certificate dated 19.11.2011 issued by one institution called “ECC Institute of Heavy Machineries” (Annexure A3) and an experience certificate dated 25.11.2011 issued by one “Earth Contractors Company” (Annexure A4). A check list was published by notice dated 31.12.2013 (Annexure A6) wherein the name of the applicant appeared at Sl.No.44. It is necessary to note that the name of the 6th respondent was placed lower at Sl.No. 49. In the merit analysis, as part of the same Annexure, the 6th respondent's grade score was only 35%, while the applicant's was 42%. Further in the Remarks Column it was stated that the 6th respondent does not possess the required experience as Crane Operator.

3. The name of 6th respondent was included in the list of 8 persons mentioned in the notification dated 18.2.2014 (Annexure A7) along with the name of the applicant. However, in the select list dated 5.9.2014 (Annexure A8) it was seen that only respondent No.6 had been selected as Crane Operator. The applicant has filed objection on 10.9.2014 to which no reply was received. The applicant has come to know that modified instructions for recruitment and appointment were issued by the 3rd respondent by order dated 11.12.2013 (Annexure A10). According to these instructions,

there shall be an open competitive examination for filling up of all posts and vacancies under Group B and C categories except in cases Recruitment Rules specifically provides for different selection process. It is laid down that after the examination only those candidates who secure the minimum of 45% marks in the written examination will be called for interview, with the condition that the minimum qualification marks may be relaxed with the approval of the Administrator, if sufficient number of suitable candidates are not available. The applicant requested for copy of the mark list/proceedings of the selection, which has not been given to him. Hence he submits that the selection of the 6th respondent is *per se* bad in law.

4. As grounds the applicant submits that the action of the official respondents is guided by ulterior motives, vested interest and in order to favour the 6th respondent. The applicant has got the required experience in the field whereas the 6th respondent has no experience as Crane Operator. The qualification acquired after submission of application cannot be taken into consideration for selection. The marks allotment in the trade test was manipulated to favour the 6th respondent and records on hand do not reveal any superior claim or comparative merit of the 6th respondent as compared to that of the applicant. Again, even after offering one post to the only available candidate, the other post could have been offered to the applicant, which was not done.

5. Per contra, official respondents have filed a reply statement denying all the averments and allegations except those which are specifically admitted. The applicant was one of the candidates who had applied for the post of Crane Operator. The selection was done by a selection committee duly constituted by order dated 27.1.2014 [Annexure R2(a)]. Even though the applicant acquired the licence to drive a crane only on 26.11.2011, his experience certificate states his period of experience was from

25.10.2009 to 25.11.2011 ie., a period prior to acquiring of valid licence. Clearly he has no experience to show after he obtained licence to operate the Crane.

6. In so far as the eligibility of Respondent No.6 is concerned, Annexure A6 notice had clearly directed the candidates that they can file claim/objection, if any, in case of any mistake in their personal data within ten days. Accordingly Respondent No.6 submitted a certificate as belonging to ST community as well as an experience certificate indicating that he has experience in operating Coles Crane, 1 Ton Hydra Crane and other cargo handling equipments from February, 2011 to 15.12.2013 [AnnexureR2(d)]. Unlike the applicant in the OA, Respondent No.6 has obtained the experience after getting a valid driving licence. Thus the 6th respondent fulfills the two years experience criteria as prescribed in Annexure A1 notification. Consequently he was included in the approved select list (Annexure A7) and was directed to appear for the practical test. The applicant in contrast, had produced an experience certificate relating to a period before acquiring a valid licence. Such certificate could not be accepted as valid and his candidature was rejected. The applicant has argued that selection for these categories of employees are to be made only in accordance with Annexure A10 notification. However, these modified instructions can have only prospective effect in operation

7. When the matter was pending before this Bench, one Shri. Shaik Abdulla, (the 6th respondent) filed a Miscellaneous Application No.13/2015 for a direction to appoint him to the post of Crane Operator pursuant to Annexure A8 notification, to which the respondents have filed a reply statement stating that the respondents have no objection to issuing posting order to Shri Shaik Abdulla, subject to the outcome of the OA. Applicant filed an MA No.1301/2016 for acceptance of Annexure A11 which is an

experience certificate dated 31.12.2013 stating that the applicant had been employed in Earth Contractors Company, Oachira as Crane Operator from 25.12.2011 to 31.12.2013. This MA has been allowed and the document was accepted.

8. Shri Paulachan representing Shri N. Unnikrishanan, learned counsel for the applicant and Shri R.Sreeraj, representing Shri S.Manu, learned standing counsel for the Lakshadweep Administration were heard and all pleadings examined. Lakshadweep Administration produced the selection file relating to Crane Operators, which was also perused.

9. The moot point in this OA is the argument concerning the relative merits of two candidates who had offered themselves for selection as Crane Operator. A public notice was put out and applications were invited by the official respondents, to which both the candidates (applicant and Respondent No.6) applied. Finally after due process, one successful candidate was announced who is Respondent No.6 in the OA. The applicant is aggrieved by his non-selection. As is seen from the notification the eligibility for applying for the post is a pass in SSLC as well as a valid licence for operating Cranes along with two years of relevant experience. The applicant appears to have acquired a licence under the Motor Vehicles Act for driving a Crane on 26.11.2011. Yet as relevant experience, he is seen to have submitted a document which is at Annexure A3, purporting to be an experience certificate for having undergone “training on the operation, maintenance and safety aspects of crane” from 4.10.2011 to 19.11.2011. The further experience certificate issued by a concern called Earth Contractors Company certifies the applicant as having been employed as a “Backhoe Loader Operator” between 15.10.2009 to 25.11.2011. It does not require a great amount of scrutiny to come to the conclusion that the eligibility put forward by the applicant is

curious, to say the least. Both these certificates, assuming that they are experience certificates for driving Cranes were acquired before he was legally entitled to handle the machine. For this reason itself, he would be disqualified from selection.

10. His contention that he has scored a higher grade as per initial scrutiny does not assist the applicant much. Clearly the “list of qualified candidates for the post of Crane Operator” at Annexure A7 is a list drawn up on the basis of submissions made in the applications and after a preliminary level of scrutiny. It does not vest any special claim on the applicant for selection. The applicant’s contention that the amended procedures as contained in the notification Annexure A10 would nullify the selection is also not an acceptable argument. This notification can have only prospective effect and the notification relating to the recruitment conducted here having been brought out earlier will not become invalid. Applications invited through Annexure A1 is for engagement on contract basis and not for regular appointment.

11. By contrast Respondent No.6 appears to have all the necessary qualifications. He has relevant experience as per the certificate produced at Annexure R2(d) and he has acquired this experience after getting a valid licence to drive the Crane, which he acquired on 29.12.2004.

12. On a consideration of all factors, we are of the view that the OA is devoid of merit and is liable to be rejected. Accordingly we reject the OA. No order as to costs.

(E.K. Bharat Bhushan)
Administrative Member

(U. Sarathchandran)
Judicial Member

List of Annexures by Applicants

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| Annexure A-1 | - | A true copy of Notice F.No. 1/5/2013-Port (Estt) dated 25.11.2013. |
| Annexure A-2 | - | A true copy of Secondary School Leaving Certificate bearing Register No. 545596 issued by the Secretary, Board of Public Examinations, Kerala. |
| Annexure A-3 | - | A true copy of Certificate dated 19.11.2011 issued by the Principal, E.C.C. Institute of Heavy Machineries, Kollam, Kerala. |
| Annexure A-4 | - | A true copy of Experience Certificate No. ECC/C-36/11 dated 25.11.2011 issued by M/s. Earth Contractors Company, Kerala. |
| Annexure A-5 | - | A true copy of Employment Card bearing Registration No. 000362010236 dated 10.03.2010. |
| Annexure A-6 | - | A true copy of Check List of applications received for the post of Crane Operator Recruitment as per Notification F. No. 1/5/2013-Port (Estt.) dated 31.12.2013. |
| Annexure A-7 | - | A true copy of Office Order No. 1/5/2013-Port(Estt.) dated 18.02.2014 |
| Annexure A-8 | - | A true copy of Selection List bearing F.No. 1/15/2013-Port (Estt.) dated 05.09.2014. |
| Annexure A-9 | - | A true copy of Letter dated 10.09.2014. |
| Annexure A-10 | - | A true copy of order F. No. 12/28/2013 services/4417 dated 11.12.2013 issued by the 5 th respondent. |
| Annexure A-11 | - | A true copy of Experience Certificate No. ECC/C-19/13 dated 31.12.2013. |

List of Annexures by Respondents

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|-----------------|---|--|
| Annexure R-2(a) | - | A true copy of the Office Order F.No. 1/15/2013-Port (Estt.) dated 27.01.2014. |
| Annexure R-2(b) | - | A true copy of the Driving License No. 11/14923/2009 dated 26.11.2011. |
| Annexure R-2(c) | - | A true copy of the application dated 09.01.2014. |
| Annexure R-2(d) | - | A true copy of the Certificate No. ALHW/AE(Ele)/AMN/F-33/214A/2013 dated 15.12.2013. |

- Annexure R-2(e) - A true copy of the Driving License No. LD03
20040007619 dated 29.12.2004.
- Annexure R-2(f) - A true copy of the Minutes of the Selection Committee
held on 28.02.2014.

_____ PPS to Member