

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A Nos. 181/00047/2014, 181/00042/2015

**&
181/00073/2015**

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**

OA 181/00047/2014

Hameedali C.H.,
S/o. Attakoya, P., aged 40 years,
Mechanic (PH), Electrical Section,
Chetlat Island, Lakshadweep.

..... **Applicant**

(By Advocate – Mr. V.N. Ramesan Nambisan)

V e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti Island, Pin – 682 555.
2. The Executive Engineer,
Department of Electricity Division,
Kavaratti Island, Pin – 682 555.
3. Shri. M.G. Shajahan,
Chargeman, Power House,
Electrical Sub Division,
Minicoy Island,
Union Territory of Lakshadweep,
Pin – 682 555.

..... **Respondents**

**(By Advocates – Mr. S. Manu (R1 & R2
Mr. Saju Wahab R3)**

OA 181/00042/2015

1. Z.M. Abdul Shukoor
S/o. B. Mohammed Haji, aged 39 years,
Chargeman, Electrical Section, Kalpeni Island,
Lakshadweep.

2. P.V. Muhammed Shafi,
S/o. Jaffar Khan, aged 41 years,
Chargeman, Electrical Section, Bitra Island,
Lakshadweep.
3. C.M. Muhuthar,
S/o. Hameed, M., aged 39 years,
Electrician, Electricity Sub Division,
Minicoi Island, Lakshadweep.

..... **Applicants**

(By Advocate – Mr. V.N. Ramesan Nambisan)

V e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti Island, Pin – 682 555.
2. The Executive Engineer,
Department of Electricity Division,
Kavaratti Island, Pin – 682 555.
3. Shri. M.G. Shajahan,
Chargeman, Power House,
Electrical Sub Division,
Minicoy Island,
Union Territory of Lakshadweep,
Pin – 682 555.

..... **Respondents**

(By Advocate – Mr. S. Manu (R1 & R2))

OA 181/00073/2015

Mohammed Rafeeqe, K.I.,
S/o. Abdulla Koya, C.G., Aged 41 years,
Working as Electrician, Electrical Section,
Union Territory of Lakshadweep, Kalpeni – 682 557
and residing at Kakkaillam House, Union Territory
of Lakshadweep, Kalpeni – 682 557.

..... **Applicant**

(By Advocate – Mr. N. Unnikrishnan)

V e r s u s

1. Union of India rep. 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 Secretary (Power),
Union Territory of Lakshadweep,
Secretariat, Kavaratti – 682 555.
4. The Executive Engineer,
Department of Electricity,
Union Territory of Lakshadweep,
Kavaratti – 682 555.
5. Shri. M.G. Shajahan,
Chargeman, Power House,
Electrical Sub Division,
Union Territory of Lakshadweep,
Minicoy Island – 682 559.

..... Respondents

(By Advocates – Mrs. P.K. Latha, ACGSC (R1)
Mr. S. Manu (R2 to R4))

The application having been heard on 14.02.2018, the Tribunal on 23.02.2018 delivered the following:

ORDER

Per: E.K. Bharat Bhushan, Administrative Member

Since common issues of facts and law are involved in all three O.As, they are disposed of through a common order.

2. O.A No. 47/2014 is filed by Shri Hameedali C.H, who is working as Mechanic (PH), O.A No. 42/2015 is filed by Shri ZM Abdul Shukoor and Shri P.V. Muhammed Shafi, both working as Chargeman and Shri C.M. Muhuthar working as Electrician and O.A No. 73 of 2015 is filed by Shri Mohammed Rafeeqe working as Electrician under the Electrical Section of Union of Territory of Lakshadweep. Their common grievance is not being considered for the post of Junior Engineer, even though they are eligible for such appointment. In O.A

No. 47/2014 and O.A No.42/2015, the applicants have challenged the Recruitment Rules marked as Annexures A3 and A5 respectively.

3. The reliefs sought in OA 47/2014 and OA No. 42/2015 are similar, as under:

(i) To declare that in respect of promottee candidates in the feeder category to the post of Junior Engineer, prescription of ten years experience is arbitrary, violative of the fundamental rights under Articles 14, 16(1) and 21 of the Constitution of India;

(ii) To call for records leading to Annexure A3 Recruitment Rules, 2009 and to set aside the same;

(iii) To declare that in view of the settled law, the 2nd respondent has got the power to relax the rigor of Annexure A3 Special Rules as far as prescription of ten years experience is concerned and therefore by relaxing the rigor of the Rule, applicant is entitled to be promoted to the available next promotion post of Junior Engineer under the 2nd respondent.

(iv) To declare that the educational qualification of Diploma acquired by the 3rd respondent through Distance Education is not an approved qualification by the AICTE and also he does not have the prescribed period of experience after acquisition of the qualification.

(v) To direct the 2nd respondent to promote the applicant in the available vacancy of Junior Engineer under the 2nd respondent forthwith; and

(vi) To grant such other and further reliefs to the applicant as the Hon'ble Tribunal may consider just and proper in the facts and circumstances of the case.

In O.A No. 73/2015 the reliefs sought for are as under;

(i) Call for the records leading to the denial of promotion to the applicant and promotion proceedings in favour of the respondent No.5.

(ii) Declare that the respondent No.5 is not qualified as per Annexure A2 Recruitment Rules for promotion to the post of Junior Engineer (Electrical);

(iii) Declare that the applicant has superior claim over the 5th respondent and is entitled to be appointed as Junior Engineer (Electrical) without further loss of time;

(iv) Issue appropriate order or direction to respondent to consider and pass necessary orders on Annexures A8 and A9 representations after affording an opportunity of personal hearing to the applicant within a reasonable time.

(v) Issue such other appropriate orders or direction as this Hon'ble Tribunal may deem fit just and necessary ; and

(vi) To grant cost of this Original Application.

4. The brief facts of the cases in a nutshell are as under:

Applicant in O.A. No. 47/2014 had entered service as an Electrician on 11.01.2005 and he was promoted as Mechanic on 11.01.2015. He is a diploma holder in Mechanical Engineering and had one year apprenticeship training under the Lakshadweep Harbour works. Applicants in O.A. No. 42/2015 had been appointed as Chargemen and Electrician respectively on 21.03.2006. They are diploma holders in Electrical Engineering. Applicant in OA 73/2015 was appointed as Mechanic on 07.04.2006. He is a diploma holder in Mechanical Engineering. Earlier to his appointment as Mechanic, he had worked as a Skilled Worker on daily wages from 19.2.2000 under the Lakshadweep Harbour Works. He was an apprentice in the Lakshadweep Harbour Works from 21.8.2000 to 20.8.2001.

5. All the applicants are aspirants for promotion to the post of Junior Engineer (Electrical). As per the Recruitment Rules viz., Lakshadweep Electricity Department (Group B and C Technical Posts, Non-gazetted) Recruitment Rules, 2009 (Annexure A5 in OA 42/2015) the mode of recruitment to the post of Junior Engineer is laid down as below:

Educational and other qualifications required for direct recruits :	<p>Essential :- Degree in Electrical Engineering/Mechanical Engineering of a recognized University or equivalent.</p> <p>OR</p> <p>Diploma in Electrical Engineering/ Electrical and Electronics Engineering/ Mechanical Engineering of a recognized Institution or equivalent with 2 years experience in any one of the following field under Central Government/State Government/ Government undertaking.</p> <ol style="list-style-type: none"> 1. Running and maintenance of DG sets. 2. Generation, transmission and distribution of electricity. 3. Internal electrification of building. <p>Desirable:- Preference will be given to those who have satisfactorily completed apprenticeship training in Lakshadweep Electricity Department.</p>
In the case of recruitment by promotion/ deputation/ absorption, grade from which promotion/ deputation/absorption to be made.	Promotion from the post of Construction Foreman/Chargeman (PH)/ Chargeman (line)/ Meter Mechanic / Cable Jointer/ Mechanic/ Electrician with qualifications prescribed in Column 8 and having 10 years of regular service in the grade, failing which by direct recruitment.

6. Applicants submit that when respondents invited applications for the post of Junior Engineer vide notification dated 03.09.2011, the applicants' candidature was not considered by the respondents. They have further averred that as per rules, separate seniority lists had to be maintained in respect of ITI certificate holders and diploma holders for promotion to the post of Junior Engineer. However, the 3rd respondent in OA 47/2014 has been considered even though he is an ITI certificate holder and does not possess ten years experience, for promotion to the post of Junior Engineer. He had obtained a Diploma through Distance Education from a university which is not approved by AICTE. Applicant in OA 47/2014 states that he is the only candidate with requisite qualification and experience available in the department for consideration to the post of Junior Engineer. However, the respondents

are taking hasty steps to promote the 3rd respondent (5th respondent in O.A. No. 73/2015). Aggrieved, applicant in O.A. No. 47/2014 submitted a representation on 1.3.2014 (Annexure A5). Similar representations have been filed by other applicants also. Finding no response they have filed the above O.As for the aforesaid reliefs.

7. As grounds applicants submit that overlooking the legitimate claim of the applicants, the respondents are taking steps to promote a non-qualified person to the post of Junior Engineer, which is arbitrary, violative of the fundamental rights guaranteed to the applicants under Articles 14 and 16(1) of the Constitution of India. The diploma obtained by the party respondent in all the above O.As is through a Distance Education facility which is not recognized by AICTE. The party respondent does not have experience of ten years as prescribed in Annexure A-3 Special Rules. Therefore, they allege malafide against the respondents. They also submit that the action of the respondents is vitiated by arbitrariness and is based on extraneous considerations. The action of 2nd respondent in taking steps to promote the party respondent is violative of the relevant rules and settled judicial law on the point that if experience is prescribed in the Rule, necessarily that period of experience must be acquired after acquiring the qualification and that requirement cannot be relaxed, Annexure A-6 combined seniority list cannot be followed for promotion to the post of Junior Engineer, as the party respondent is not senior to the applicant in the feeder category. They have referred to a decision of the Hon'ble Supreme Court in **J.C.**

Yadav and others V. State of Haryana and others – 1990(2) SCC 189.

In ***Sirajudeen vs. Public Service Commission – 1998(2) KLT 1046*** the Hon'ble High Court held that whenever qualification of experience is prescribed either by special rules or by Recruitment Rules, or by any other method, it must have been acquired after the acquisition of the basic qualification. Therefore, the action of the 2nd respondent proposing to promote the party respondent is illegal, arbitrary and violative of the rules.

8. Per contra, respondents have filed a reply statement denying the allegations in the OA. They have cited the decisions of the Hon'ble Supreme Court in ***V.K.Sood Vs. Secretary, Civil Aviation and others – AIR 1993 SC 2285***, ***J.Rangasamy Vs. Government of AP – AIR 1990 SC 535***, ***Roopa Ashok Hurra Vs. Ashok Hurra – AIR 2002 SC 1771*** and ***Mohammed Sartaj Vs. State of UP – AIR 2006 SC 3492*** to state that it is not for the courts to prescribe qualifications when the matters are of technical nature. It is for expert bodies to decide. Hence the applicants cannot challenge the Recruitment Rules and the O.As are liable to be dismissed on that count. Applicants have not completed 10 years of service in the grade for promotion to the post of Junior Engineer (Electrical) required as per the Recruitment Rules. The essential qualification for the post of Junior Engineer is Degree in Electrical Engineering/Electrical and Electronic Engineering/Mechanical Engineering, without experience and in the case of Diploma holders, 2 years experience in the relevant field for matching with degree holders

for direct recruitment for selection. When the post of Junior Engineer was notified during 2011 and 2012 respectively no one was qualified as per Recruitment Rules for promotion and the posts were earmarked for direct recruitment in accordance with the Recruitment Rules.

9. Applicant in OA 47/2014 admitted that he will be completing 10 years on 11.1.2015, which shows that he has not completed 10 years service (experience) in the feeder post. It is true that the department initiated process for recruitment of Junior Engineer consequent on promotion of one Mr. K.P.Naseemudhan to the higher post during 2013. Shri MG Shajahan (party respondent) has got the required educational qualification and is having 17 years experience as prescribed in the Recruitment Rules. Hence he is being considered for promotion to the post of Junior Engineer. They have also stated that two other O.As 1072/2012 and 177/2013 are pending consideration before this Tribunal with respect to selection of Junior Engineer (Electrical).

10. Applicants have filed rejoinder reiterating their contentions in the OA. Applicant in OA 47/2014 submitted that he has completed ten years experience on 11.1.2015; hence he is eligible to be promoted as Junior Engineer in the promotion quota. The averments of the respondents in the reply that Shri M.G.Shajahan, the party respondent, has got the prescribed qualification is not correct as he has obtained Diploma in Engineering through Distance Education from Rajasthan Vidyapeedom which is not an approved university of AICTE. In O.A No. 47/2014 the respondents have filed a counsel statement. They have

produced relevant portion of OM No.AB.14017/48/2010-Estt(RR) dated 31.12.2010 – Guidelines on framing/ amendment/relaxation of recruitment rules as Annexure R1(a) to show that there is no illegality or arbitrariness in prescribing 10 years as the experience for promotion as Junior Engineer (Electrical).

11. The post of Junior Engineer is set apart as 50% for Direct Recruitment limiting to 75% for Degree/Diploma in Electrical / Electrical and Electronics Engineering, failing which by Degree/Diploma in Mechanical Engineering or equivalent and 25% for Degree/Diploma in Mechanical Engineering, failing which by Degree/Diploma in Electrical/Electrical and Electronics Engineering or equivalent who possess Educational qualifications prescribed in Column 8 of the Schedule 1 and on failure of the above by deputation. In the case of recruitment my promotion/deputation/absorption, the promotion is from the post of Construction Foreman/Chargeman (PH)/Chargeman (line)/ Meter Mechanic/Cable Jointer/Mechanic/Electrician with qualifications in Column 8 and having 10 years in the regular service and on failure of which by Direct Recruitment.

12. Shri V.N. Ramesan Nambissan on behalf of applicants in O.A No. 42/2015 and 47/2015 and Shri N. Unnikrishnan for the applicant in O.A No. 73/2015 appeared. Shri R. Sreeraj represented Mr. S. Manu, learned Standing Counsel for the respondents. Arguments advanced by them have been heard and all the documents perused.

13. The grievance of the applicants in the three O.As is similar and

the prayer in O.A No. 47/2014 and 42/2015 are identical. The applicants in the two O.As are seeking quashing of Annexure A-3 Recruitment Rules, 2009 on the ground that it is discriminatory and violative of the fundamental rights under Articles 14, 16(1) and 21 of the Constitution of India. The applicants in the two O.As as also the applicant in O.A 73/2015 are aspirants to the post of Junior Engineer. The applicants in the two O.As have assailed Special Rules (Annexure A-3) on the ground of incongruity in specifying two years experience for Diploma holders under Direct Recruitment and 10 years experience for insider candidates with same educational qualifications. They also train their guns on the party respondents Shri M.G. Shajahan (Respondent No. 3 in O.A No. 47/2015 and 42/2015 and Respondent No. 5 in O.A No. 73/2015). They contend that Shri Shajahan's basic qualification of Diploma in Engineering has been obtained through Distance Education from a facility known as Rajasthan Vidyapeedom which is not an approved institute of AICTE. They cite Annexure A-6 document which is issued by AICTE Advisor dated 05.08.2010 which categorically affirms:-

“B.Tech Degree acquired through distance education from any University/Deemed University/not approved by AICTE.”

14. In O.A. No. 73/2015, the Special Rules are not challenged. However, the eligibility of the same individual Shri M.G. Shajahan, Respondent No.5 considered eligible on the basis of a Diploma that he has obtained from a facility providing Distance Education, has been challenged. The applicant in this O.A has stressed his relative seniority

viz a viz respondent No. 5 and states that the latter is being preferred for promotion on the basis of a dubious eligibility norm. Besides, respondent No. 5 according to the applicant does not have the required experience *after* he acquired his distance Degree / Diploma.

15. Respondents have referred to some judgments of the Hon'ble Apex Court as well as the Hon'ble High Court to underline the basic rule that it is not for Courts to prescribe qualifications when matters of technical nature are involved. They have attempted to cloak the Special Rules which are challenged here under a shroud of sanctity on this ground. They go on to state that the applicants in the three O.As are only marginally below completing 10 years of service in the given grade which would make them eligible for consideration for the post of Junior Engineer, within a short time.

16. From a reading of the above, as well as the contentions made by the learned counsel on both sides, we are clearly of the view that in prescribing one set of qualifications as required experience for direct recruits and insisting on an altogether longer period of experience for insider candidates, given the point that the educational qualifications required from both categories is one and the same, is discriminatory and violative of principles of natural justice. It suffers from the charge of inequity and is liable to be struck down. We, accordingly, set aside the Special Rules at Annexure A-3, which is a notification dated 19.09.2012 issued by the Administration of the Union Territory of Lakshadweep. Consequently, we also order that no promotions may be made on the

strength of this regularisation which is set aside. The respondent No. 1 is directed to formulate a well considered and equitable set of rules governing the recruitment/promotion to the categories mentioned therein. This may be done within three months of receipt of copy of this order. The O.As are disposed of as above. No order as to costs.

17. In view of disposal of OA, MA No.388/2016 in OA 47/2014 and MA No. 385/2016 in OA No. 42/2015 are stand closed.

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

kspps/ax

List of Annexures of the applicant in OA 181/00047/2014

- Annexure A-1 - True copy of the Diploma Certificate issued by the State Board of Technical Education and Training, Department of Technical Education Chennai to the applicant.
- Annexure A-2 - True copy of the Certificate No. LHW/Estt./8/181 dated 14.01.2003 issued by the Deputy Chief Engineer, Lakshadweep Harbour Works Department to the applicant.
- Annexure A-3 - True copy of the relevant pages of the Special Rules, viz. Lakshadweep Electricity Department (Group B & C Technical Posts, Non-gazetted) Recruitment Rules, 2009 dated 19.12.2009.
- Annexure A-4 - True copy of order F.No. 1-45/UB/2010 dated 5.08.2010 issued by the AICTE.
- Annexure A-5 - True copy of the detailed representation dated 01.03.2014 submitted by the applicant before the 2nd respondent.
- Annexure A-6 - True copy of the common seniority list published as on 25.11.2012 to the category of Electrician/Chargeman.

List of Annexures of the 1st Respondent

- Annexure R1(a):** - True copy of the relevant portions of the OM No. AB. 14017/48/2010-Estt(RR) dated 31.12.2010.

List of Annexures of the applicant in OA 181/00042/2015

- Annexure A-1 - True copy of the Diploma Certificate of the 1st applicant issued by the State Board of Technical Education, Government of Kerala.
- Annexure A-2 - True copy of the Diploma Certificate of the 2nd applicant issued by the State Board of Technical Education, Government of Kerala.
- Annexure A-3 - True copy of the Diploma Certificate of the 3rd applicant issued by the State Board of Technical Education, Government of Kerala.
- Annexure A-4 - True copy of order of appointment dated 21.03.2006 issued by the 2nd respondent to the applicants No. F. 36/2/2004-Estt. Ele/871.
- Annexure A-5 - True copy of the relevant pages of the Special Rules viz. Lakshadweep Electricity Department (Groups B & C Technical Posts – Non-gazetted) Recruitment Rules, 2009.
- Annexure A-6 - True copy of order F.No. 1-45/UB/2010 dated 5.08.2010 issued by the All India Council for Technical Education.
- Annexure A-7 - True copy of representation dated 04.03.2014 submitted by the 1st applicant before the 2nd respondent.
- Annexure A-8 - A true copy of the representation dated 24.10.2014 submitted by the 2nd applicant before the 2nd respondent.
- Annexure A-9 - True copy of the representation dated 14.01.2015 submitted by the 3rd applicant before the 2nd respondent.
- Annexure A-10 - True copy of common seniority list published as on 25.11.2012 to the category of Electrician/Chargeman.

List of Annexures of the 1st Respondent

- Annexure R1(a):** - True copy of the OM No. AB.14017/61/2008-Estt(RR) dated 24.03.2009.

List of Annexures of the applicant in OA 181/00073/2015

- Annexure A-1 - A true copy of Office Order F.No.36/2/2004 – Estt/Elec/1667 dated 07.04.2006.
- Annexure A-2 - A true copy of Lakshadweep Electricity Department (Group 'B' and 'C' Technical Posts Non-Gazetted) Recruitment Rules, 2009 published in Lakshadweep Gazette Notification F.No.. 40/19/09-Estt/Ele dated 19.12.2009.
- Annexure A-3 - A true copy of Certificate Register No. 3651 dated 05.09.1997 issued by the Joint Controller of Technical Examinations (Kerala) on behalf of the State Board of Technical Education, Kerala.

- Annexure A-4 - A true copy of Certificate No. LHW/AE/KLP/P.109/ 385/2000 dated 12.06.2000 issued by the Assistant Engineer (Civil), Lakshadweep Harbour Works, Kalpeni.
- Annexure A-5 - A true copy of Certificate No. LHW/Estt/8/5939 dated 25.02.2002 issued by the Deputy Chief Engineer, Government of India, Ministry of Shipping, Lakshadweep Harbour Works, Kavaratti – 682 555.
- Annexure A-6 - A true copy of Representation dated 21.01.2010.
- Annexure A-7 - A true copy of Office Memorandum F.No. 40/7/2009-Estt/Ele/3080 dated 25.10.2012 along with Final Seniority List of Electrical/Chargeman and Similar Grades appointed up to 31.12.2009.
- Annexure A-8 - A true copy of Representation dated 06.11.2012.
- Annexure A-9 - A true copy of Objection Representation dated 04.03.2014.
- Annexure A-10 - A true copy of Order dated 17.02.2011 in O.A. No. 743/2009.
- Annexure A-11 - A true copy of Notice F.No. 36/1/2011-Estt/Ele./2453 dated 03.09.2011.
- Annexure A-12 - A true copy of Notice F.No. 36/1/2012-Estt/Ele/1855 dated 26.06.2012.
- Annexure A-13 - A true copy of Letter F.No. 1-45/UB/2010 dated 05.08.2010 received from Dr. Renu Bapna, Adviser University Bureau), AICTE.
- Annexure A-14 - A true copy of Public Notice Advt. No. UB/04(04)/2010 issued by the Member-Secretary, AICTE.
- Annexure A-15 - A true copy of List of those Universities in India approved by UGC+AICTE+DEC.
- Annexure A-16 - A true copy of Office Memorandum F.No.08/39/2011-EC-III dated 04.10.2013 issued by the Central Public Works Department, Government of India, Nirman Bhavan New Delhi through Deputy Director (Administration).
- Annexure A-17 - A true copy of List of AICTE Approved Universities in Rajasthan-2013-2014, downloaded from Internet.
- Annexure A-18 - A true copy of List of Universities/Institutions approved by Distance Education Council (As on 19.02.2009).
- Annexure A-19 - A true copy of Letter F.No. 40/9/2005-Estt/Ele./527 dated 06.03.2013 issued by the 4th respondent.
- Annexure A-20 - A true copy of Letter F.No. 40/2/2014-Estt./Ele dated

13.02.2014.

Annexure A- 21 - A true copy of the Notice F.No. 36/5/2004-Estt/Ele/646 dated 02.03.2006.

Annexure A-22 - A true copy of the Judgment dated 28.11.2013 in Ramachander and Others Vs. State of Haryana and Others.

List of Annexures of the 2nd Respondent

Annexure R2 (a) - A true copy of the appointment order F.No. 36/2/2004-Estt/Ele/871 dated 21.03.2006.

Annexure R2 (b) - True copy of the relevant portions of the OM No. AB. 14017/48/2010-Estt..(RR) dated 31.12.2010.

PPS to Member

