

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.181/00255/2018

Tuesday, this the 15th day of May, 2018

CORAM:

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

Dr. Thahliya N.,
Aged 25, D/o. Mohammed Khan K.P.,
Nedumthiruve House, UT of Lakshadweep,
Kiltan Island. **Applicant**

(By Advocate – Mr. P.V. Mohanan)

V e r s u s

- 1 The Administrator,
Union Territory of Lakshadweep,
Kavarathy – 682 555.
- 2 The Director,
National AYUSH Mission (NAM),
Department of Ayurveda, Yoga, Yunani, Sidha and Homeopathy
(AYUSH), Department of Health, Union Territory of Lakshadweep,
Kavaratti – 682 555.
- 3 Dr. M. Sayed Muhammed Koya,
Director, AYUSH,
Member Secretary (Executive Committee),
National AYUSH Mission, UT of Lakshadweep,
Kavaratti – 682 555.
- 4 Dr. Sahila Shem Sham C.N.,
D/o. P. Hyder,
Cheriyan Nallal House, UT of Lakshadweep,
Kalpeni Island – 682 557. **Respondents**

**(By Advocate – Mr. S. Manu (R1 & R2))
Mr. M.R. Hariraj (R4))**

This Original Application having been heard on 12.04.2018, the
Tribunal on 15.05.2018 delivered the following:

ORDER

Per: U. Sarathchandran, Judicial Member

Order in OA No. 181/255/2018 and MA No. 181/399/2018 to vacate IR

1. The applicant is a candidate who had appeared in the selection process for the engagement as Medical Officer (Homeopathy) on contractual basis in response to Annexure A1 employment notice published by the official respondents on 15.12.2017. Her grievance is that, as per the Check list published (Annexure A2), although she had higher percentage of marks based on the marks scored in academic qualification than the respondent No. 4, she was ranked below respondent No. 4 so that she happened to be in the waiting list in Annexure A3 select list published on 10.03.2018 wherein only 3 persons were selected for the post of Medical Officer (Homeopathy), the 3rd person selected being respondent No. 4. It is also alleged by the applicant that she happened to be ranked below respondent No. 4 on account of the higher marks given to the latter for the interview on account of the relationship respondent No. 4 is having with respondent No. 3, the Director of AYUSH. Yet another grievance is that no experts from the homeopathy discipline was included in the Selection Board but just two minutes before the interview a homeopathy doctor was called to take part in the interview process though he did not ask any questions or award any marks to the candidates. The relief the applicant seeks is as under:

“i. To call for records leading to Annexure A3 Select List of Medical Officer (Homeopathy) Under AYUSH Hospital, Kavarathy and set aside the same in so far as it selects the fourth respondent, Dr. Shila Shem Sham C.N. as Medical Officer (Homeopathy), AYUSH Hospital.

ii. To declare that the applicant is selected and included as Rank No. 3 in the Select List of Medical Officer (Homeopathy), AYUSH Hospital,

Kavarathy, and to declare that the applicant is appointed with all consequential benefits.

iii Any other appropriate order or direction as this Hon'ble tribunal deem fit in the interest of justice."

2. When the case came up for admission, an interim order was passed by this Tribunal staying the operation of Annexure A3 select list *qua* respondent No. 4.

3. A reply statement was filed by the respondents 1 and 2 contending that the allegation against the constitution of interview board and awarding of the marks are baseless, misleading and incorrect. According to the above respondents, Dr. Fathahudheen, the first Homeo doctor of Lakshadweep with 18 years of professional experience was requested to be present at the time of interview to assist the interview board for assessing the candidates by analysing the prescriptions prepared by them. According to the above respondents, the prescription written by the applicant was rated as poorest among the four candidates. Respondents 1 and 2 deny the allegation that respondent No. 3 is a relative of respondent No. 4 although they both belong to the same Island ie. Kalpeni. The selection criteria adopted is to reckon 85% of the marks obtained for academic qualification and 15% for interview. The select list was published on 10.03.2018. The respondent No. 4 obtained 57.68% marks out of 100 (85% academic mark plus 15% mark for interview) whereas the applicant received a total of 57.59% marks only. The respondents 1 and 2 contend that the OA should be rejected as the applicant has challenged the recruitment process after having taken part in it.

4. A rejoinder was filed by the applicant contending that the inclusion of Dr. Fathahudheen in the interview process was done without the knowledge of Administrator and the aforesaid person was not a member of the interview board constituted by the Administrator. The decision of the interview process was influenced by the decision of Shri. Fathahudheen, who said to have analysed the prescription written by the applicant. It is further contended that respondent No. 3 ie. Director (AYUSH), is a relative of respondent No. 4. The father of respondent No. 3 is the maternal uncle of 4th respondent's mother. Respondent No. 3 is a retired person and is working on contract basis as Director, AYUSH. He being a resident of Kalpeni Island had exerted influence over the Chairman of the interview board with a view to confer more marks to the respondents. The applicant further points out that as per Annexure A5 and Annexure A6 Government of India's instructions the process of interview is to be dispensed with for Group 'B' Non-Gazetted category of post w.e.f. 01.01.2016.

5. We have heard Shri. P.V. Mohanan, learned counsel for the applicant and Mr. S. Manu, learned Standing Counsel for Lakshadweep Administration for respondent Nos. 1 and 3. Though, notice to respondent No.2 and 4 were served they did not appear before the Tribunal. No written statement was filed by them.

6. According to the applicant, the decision of the interview board to award higher marks to respondent No. 4 in the interview ignoring the higher academic merits of the applicant was not justifiable in the light of the

Apex Court ruling in *Ajay Hasia etc v. Khalid Mujib Sehravardi and others etc* AIR 1981 SC 487, *Lila Dhar v. State of Rajasthan and others* AIR 1981 SC 1777 and *Ashok Kumar Yadav and others v. State of Haryana and others* AIR 1987 SC 454.

7. Shri. P.V. Mohanan, learned counsel for the applicant submitted that the Apex Court in the aforementioned judgments had made it clear that the interview shall not be the sole criteria for assessing the capacity and calibre of candidates and hence interview cannot be relied upon as an exclusive test except as an additional or supplementary test to assess the calibre and capacity of the candidates. In this connection, Shri. P.V. Mohanan, learned counsel for the applicant relied on the Constitution Bench decisions of the Apex Court in **Ajay Hasia's** case (*supra*), **Lila Dhar's** case (*supra*) and **Ashok Kumar Yadav's** case (*supra*) holding that the importance to be attached to the interview test must be minimal.

8. Nevertheless, we note that the recruitment process in the instant case was solely based on Annexure A1 employment notice. The posts notified in Annexure A1 are purely for contractual appointment, not regular posts. Therefore, it is obvious that there are no recruitment rules. However, the official respondents have made it clear in their pleadings that the selection was based on 85% of the marks obtained by the candidates for the academic qualification and 15% was set apart for the interview. In our view, this method of allocation of total marks for each candidate in the selection process was perfectly in tune with the aforementioned decisions of the Apex

Court because only 15% of the marks is set apart for Interview. But the grievance of the applicant is that she was side-lined and was placed below the respondent No. 4 in the select list sheerly out of the higher marks awarded to respondent No. 4 in the interview, tilting the balance which had weighed in favour of the applicant because of her higher academic marks. The official respondents state that the difference in the marks between respondent Nos. 3 and 4 was a meger 0.09%. But the applicant alleges that the higher marks awarded to respondent No. 4 in the interview was with a deliberate motive on the part of respondent No. 3 to select respondent No. 4 as the latter being his own relative.

9. In *Madan Lal and others v. State of J & K and others* (1995) 3 SCC 486 the Apex Court held :

“....The question as to whether the candidates who had got more marks in the written test as compared to the selected respondents is in the realm of assessment of relative merits of candidates considered by the expert committee before whom these candidates appeared for the viva voce. Merely on the basis of petitioners' apprehension or suspicion that they were deliberately given less marks at the oral interview as compared to the rival candidates, it cannot be said that the process of assessment was vitiated.....”

10. It has to be noted that in **Madan Lal's** case (*supra*) the decisions in **Ajay Hasia's** case (*supra*) and **Lila Dhar's** case (*supra*) were discussed and analysed by the Apex Court. However, in the case on hand, we are unable to see any arbitrary awarding of higher marks to respondent No. 4. Merely because of the fact that she may be a distant relative of respondent No. 3, we were unable to find any blatant exercise of nepotism or a preferential treatment made out to respondent No. 4 in the process of interview. The official respondents state in their reply statement that when

the prescriptions written by the candidates were examined by the interview board with the help of a Homeopathy doctor who was called to assist the board in the interview process, it was found that the prescription written by the applicant was much low in quality than the prescriptions of the other candidates.

11. It is alleged by the applicant that the presence of Dr. Fathahudheen who not a member of the interview board constituted by the Administrator had in fact influenced the interview board members in the matter of assessing the merits of the candidates. In *Madan Lal and others v. State of J & K and others* (1995) 3 SCC 486 the Apex Court observed:

“.....the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better.....”

12. It is settled position that after having participated in the recruitment process cannot challenge the recruitment. This position is founded on the legal principle of estoppel. In *Madan Lal's case (supra)* the Apex Court said :

“The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla* (AIR 1986 SC 1043) it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in

examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

(underlining supplied)

13. It can be seen from Annexure R1(a) order that the Selection Board constituted by the Administrator, Union Territory of Lakshadweep was for selecting candidates for the post of Medical Officers both Ayurveda and Homeopathy. The Selection Board comprised of 1) Secretary (Health) as Chairman, 2) Director (Health Services), 3) Director (AYUSH) and 4) Mission Director (NHM) as members. True, there were no person specialised in Homeopathy amongst the members of the Selection Board. It has to be noted that the Selection Board which conducts the interview of candidates is assessing the ability of the candidates to be posted for the posts. In **Madan Lal's** case (*supra*) relying on **Lila Dhar's** case (*supra*) and **Ashok Kumar Yadav's** case (*supra*), it was held that the interview board was not having any obligation to subdivide the marks under various heads. The purpose of the interview is to have an overall assessment of the candidate. Therefore, we are of the opinion that the interview board consisting of the aforementioned members need not necessarily award subject wise marks for Homeopathy related topics. The assistance of Dr. Fathahudheen was sought by the interview board for assisting it to examine the prescriptions written by the different homeopathy candidates. The applicant herself admits that neither any questions were put by Dr. Fathahudheen to the candidates nor any marks were awarded by him. Therefore, we find no irregularity on the part of the interview board in seeking Dr. Fathahudheen's assistance for evaluating the prescriptions written by the 4 candidates, who took part in the interview process.

14. It is worth mentioning that at the time of participating in interview or immediately thereafter, the applicant has not raised any protest against the method adopted by the interview board inviting Dr. Fathahudheen to assist the board. Only after she came to know that she has been placed in the impugned Annexure A3 select list as a waiting list candidate below respondent No. 4, she became aggrieved of the process adopted by the interview board. It is worth mentioning that as there are no recruitment rules existing and since the post was purely on contractual basis for a period of one year, there was no rule as to who all should constitute the interview board. We are unable to find any arbitrariness on the part of the official respondents in the selection process.

15. In the light of the above discussion, we are of the view that Annexure A3 does not require any interference by this Tribunal. Therefore, it goes without saying that the applicant is not entitled to the relief sought in this OA. The interim order passed by this Tribunal is hereby vacated and accordingly, MA No. 399 of 2018 stands allowed. MA No. 468/2018 is closed.

16. In the result, the OA is dismissed. Parties shall suffer their own costs.

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

List of Annexures of the Applicant

Annexure A-1 - True copy of the Notification F. No. 1/13/2017-NAM dated 15.12.2017 issued by second respondent.

Annexure A-2 - True copy of the Check List for the post of Medical Officer (Homeopathy) on contract basis issued by the second respondent.

Annexure A-3 - True copy of the Select list F. No. 1/13/2017-NAM dated 10.03.2018 issued by second respondent.

Annexure A-4 - True copy of the Notification dated 31.05.2017 relating to selection of Post Graduate Teachers on contract basis.

Annexure A-5 - True copy of Office Memorandum dated 14.12.2015.

Annexure A-6 - True copy of Office Memorandum dated 29.12.2015.

List of Annexures of the Respondents 1 and 2

Annexure R1(a) - True copy of the order dated 01.02.2018 constituting the selection board.
