

**Central Administrative Tribunal
Ernakulam Bench**

OA/181/00038/2015

Monday, this the 4th day of June, 2018

CORAM

HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Shemmone.T., aged 31 years
S/o Mohammed P.,
Therakal House, Kadmath
Lakshadweep-682 556.

Applicant

(By Advocate: Mr.M.R.Hariraj)

versus

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 Executive Engineer (Electrical)
Union Territory of Lakshadweep
Kavaratti-682 555.
4. The Director (Services)
Union Territory of Lakshadweep
Kavaratti-682 555.

Respondents

By Advocate:

Mr.T.C.Krishna, Sr.PCGC for R1

Mr.S.Manu for R2 to 4

This OA having been heard on 4th June, 2018, the Tribunal delivered the following order on the same day:

O R D E R (oral)**By U.Sarathchandran, Judicial Member**

The applicant has approached this Tribunal being aggrieved by the refusal on the part of the respondents to complete the process of appointment for the post of Junior Engineer (Electrical) and to consider him for appointment based on the marks obtained in the selection process. The order impugned in this OA is Annexure A8 communicated by respondent No.3 to the applicant. It reads thus:

*“Administration of the
Union Territory of Lakshadweep
(Department of Electricity)
Kavaratti*

F.No.36/1/2006-Estt/Ele/413

Dated 5.3.2015

To

*Shri T.Shemmone, Therakal House
Kadmat Island.*

Sub: Electricity-Common judgment dated 20th November 2014 of Hon: High Court of Kerala – Reply furnished off – Regarding.

Ref-1) Representation of Shri T.Shemmone, Therakal House, Kadmat.

2) Stay order dated 9.1.2015 of Hon'ble Supreme Court of India.

Sir,

Attention of Shri T.Shemmone, Therakal, Kadmat regarding implementation of Hon'ble High Court of Kerala Common Judgment dated 20th November 2011. The department has initiated action for the implementation of Judgment in the meantime, aggrieved party filed a special leave petition in the Hon'ble Supreme Court of India. The Hon'ble Court has stayed the operation of the impugned order of the Hon'ble High Court. Copy of the stay order dated 9.1.2015 is enclosed herewith for your information.

*(R.Ravichandar)
Executive Engineer (Ele)”*

2. The applicant states that while he got himself impleaded in OP(CAT) 1493/2013 before the Hon'ble High Court of Kerala, which was adjudicated by

the High Court along with other cases viz. WP(C) 5222, 6014, 14891, 14892, 15398 of 2010 and OP(CAT) No.1305/2013 and that those cases were disposed of by the High Court of Kerala vide Annexure A7 judgment.

3. The applicant points out that Annexure A8 which mentions that a party aggrieved by Annexure A7 judgment of the High Court had filed SLP before the Hon'ble Supreme Court, the SLP is not pertaining to the case in which the applicant is a party i.e., OP (CAT) 1493/2013 and that a careful reading of Annexure A7 would make it clear that OP (CAT) 1493/2013 was dealt with by the High Court in Annexure A7 judgment distinctly and separately and that the same was dismissed by the High Court in the following terms:

“16. As regards OP (CAT) 1493/13 filed against the order in OA 345/12, the case of the applicant was that the one vacancy in the post of Junior Engineer (Electrical) notified by the Lakshadweep Administration on 3.9.2011 should have been included in the notification dated 16.5.2008 where the Administration had invited applications against 6 vacancies. This contention is raised relying on Annexure A6 produced in the OA suggesting that the vacancy that was notified on 3.9.2011 arose on 30.6.2008. However, this has been explained by the Administration in the reply statement filed in OA 345/12 in paragraphs 4 and 7 thus:

“4. It is submitted that one post of Junior Engineer (Ele) became vacant consequent on the promotion of Shri M.P.Dharweshkhan, Junior Engineer (Electrical) as Assistant Engineer (Ele) on regular basis on 19.5.2011. Hence the Department has invited applications to the post of Junior Engineer, Electrical by Notification F.No.36/1/2001-Estt/Ele dated 3.9.2011 (Annexure A8). It is submitted that the vacancy notified now as per Annexure A8 was not on account of the retirement of one Mr.Thangakoya. It is due to the promotion of Shri M.P.Dharweshkhan, to the post of Assistant Engineer (Ele) on 19.5.2011.

7. These 6 vacancies which arose upto 31.3.2008 were notified by Annexure A2 on 16.5.2008. The vacancy arose due to the retirement of Shri M.Thangakoya and Shri T.P.Pookoya, who retired on 30.6.2008 and 31.5.2009 respectively, were filled on rejoining duty of Shri V.B.Ali, AE on reversion and repatriation of Shri A.C.Attakoya, JE. The vacancy which arose on 19.5.2011 was notified by Annexure A8.”

17. There is no material to indicate that the assertion made to the above effect is factually erroneous. If that be so, the vacancy that arose on 30.6.2008 was also filled up by an internal candidate and the vacancy which

4. Sri Hariraj, learned counsel for the applicant then took us to Annexure A9 copy of the order passed by the Hon'ble Supreme Court of India on 9.1.2015 in SLP No. 210/2015. The order of the Hon'ble Apex Court at Annexure A9 is reproduced hereunder :

In the meanwhile, there shall be stay of operation of the impugned order of the High Court.”

5. Mr.Hariraj pointed out that a careful reading of Annexure A9 reveals that the aforesaid SLP pending before the Apex Court had arisen out of the impugned final judgment and order dated 20.11.2014 in WP No.15398/2010 of the Hon'ble High Court. He submitted that Annexure A9 copy of the order further indicates that what has been stayed by the Apex Court is operation of the impugned order i.e., pertaining to WP No.15398/2010 passed by the Hon'ble High Court of Kerala.

6. We have heard the learned counsel appearing for the Lakshadweep Administration also. After hearing Mr.Hariraj, learned counsel for the applicant and on perusal of the record, we are of the view that the contentions raised by the applicant in this OA are quite valid and that the reliefs sought by him are only to be allowed as there is nothing to indicate from the record that Annexure A9 order of the Apex Court is having any connection with the applicant's case although he was one of the parties in OP(CAT) 1493/2013 which was dismissed, clearing the way for him to be considered for appointment to the post of Junior Engineer (Electrical) based on his merit as reflected in Annexures A2 & A3. We order accordingly. We direct the respondents to implement this order within two months from the date of receipt of a copy of this order. The OA is disposed of as above. No order as to costs.

(E.K.Bharat Bhushan)
Administrative Member

(U.Sarathchandran)
Judicial Member

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Annexures appended by the applicant:

Annexure A8: Copy of letter F.No.36/1/2006-Estt/Ele/431 dated 5.3.2015.

Annexure A1: Copy of notification dated 3.9.2011.

Annexure A2: Copy of check list published with notice No.F N 36/1/2011-Estt/Ele dated 2.4.2012.

Annexure A3: Copy of check list published with notice No.F N 36/1/2011-Estt/Ele/155 dated 31.1.2013.

Annexure A4: Copy of interim order dated 4.3.2013 in OA 177/2013 on the files of this Tribunal.

Annexure A5: Copy of final order dated 7.8.2013 in OA 177/2013 on the files of this Tribunal.

Annexure A6: Copy of letter F.No.40/9/2005-Estt/Ele-Vol III/2614 dated 5.11.2013.

Annexure A7: Copy of common judgment in OP CAT 1493/2013 of the Hon'ble High Court of Kerala.

Annexure A9: Copy of interim order dated 9.1.2015 in SLP 210/2015 on the files of the Hon'ble Supreme Court of India.