

**Central Administrative Tribunal
Ernakulam Bench**

OA/181/01043/2016

Thursday, this the 2nd day of August, 2018.

CORAM

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

Hon'ble Mr.Ashish Kalia, Judicial Member

Aseed K.

W/o Naseer

Arafa, M.G.Road,

Minicoy Island.

Applicant

(By Advocate: Mr.K.B.Gangesh rep by Smt.Smitha Gangesh)

versus

1. The Administrator
Administration of the Union
Territory of Lakshadweep
Kavaratti-682 555.

2. Superintendent Engineer
Lakshadweep Public Works Department
Administration of the Union Territory of
Lakshadweep, Kavaratti-682 555.

3. Shafeeque P., age 33
S/o Muthukoya
Puthillam House
Amini, Union Territory of
Lakshadweep-682 552.

Respondents

Advocates:

Mr. S. Manu rep by Mr.R.Sreeraj for R1&2

M/s Sheriff Associates for R3 rep by Mr. Ziad Rahman

This OA having been heard on 31st July, 2018, the Tribunal delivered the following order on 2nd August, 2018:

ORDER

By E.K.Bharat Bhushan, Administrative Member

On 18.12.2015, the 2nd respondent had invited applications from qualified local candidates from Lakshadweep for appointment to the post of Junior

Engineer (Civil). True copy of the Employment Notice is at Annexure A2. Selection under the direct recruitment quota was through open competitive examination and was restricted to candidates who were between 18 and 30 years of age as on 27.1.2016. This age criteria was relaxable for government servants and SC/ST candidates in accordance with the instructions issued by Govt of India from time to time. The applicant in the OA, who is a native of Minicoy Island and thus is a local candidate with Diploma in Civil Engineering, applied for the post, and was included in the Check List published by the 2nd respondent on 22.4.2016. Copy of the Check List is at Annexure A3. After the competitive examination was conducted, a rank list was published by the 2nd respondent and the applicant secured first rank, aggregating the highest mark in the competitive examination. Copy of the rank list is at Annexure A4. However, she was surprised to receive an intimation dated 25.11.2016 issued in the name of the 2nd respondent stating that she cannot be considered for selection to the post on the ground that she is over aged. Copy of the said communication is at Annexure A7.

2. The applicant submits that her father is a native of Minicoy Island and her mother a Keralite. As she lives in Minicoy Island, she is to be considered as a local candidate whereby she would qualify to be a member of the ST category. This would have enabled her to get the benefit of age relaxation. The notification for the examination clearly mentions that the age limit is relaxable in the case of government servants and SC/ST candidates. She admits that she is not a member of the ST community *per-se* as her mother is not a native of the Lakshadweep Island. However, as a member of the Muslim Community, she ought to be given the benefit of OBC status whereby enabling her to get age relaxation as applicable to OBC category. As per the orders issued by the Govt of India, an

OBC candidate is eligible for age relaxation for 3 years. She cites cases of the 2nd and 4th rank holders in the list, who have been given the benefit of age relaxation.

3. The applicant also submits that she is employed in the Lakshadweep Department as a contract employee whereby she would be entitled for age relaxation applicable to departmental candidates. Thus it is maintained in the OA that the applicant is entitled to age relaxation as a departmental candidate, as per OBC status and also age relaxation applicable to selection by open competitive examination.

4. The reliefs sought in the OA are as follows:

(i) Set aside Annexure A1 order issued by the 2nd respondent and Annexure A2 to the extent it does not mention age relaxation for OBC candidates and selection through open competitive examination as ordered by the Govt of India.

(ii) Declare that the applicant is entitled for age relaxation applicable to departmental candidates, OBC candidates and selection through open competitive examination as ordered by the Union Government in the matter of appointment pursuant to Annexure A2 notification.

(iii) Direct the respondents to complete the process of selection initiated by them pursuant to Annexure A2 notification forthwith by appointing the applicant and other eligible candidates as Junior Engineer (Civil).

5. Per contra, the respondents 1 & 2 have filed a reply statement rebutting the contentions of the applicant. It is maintained therein that there is no age relaxation for OBC candidates in Lakshadweep and the certificate issued by the Govt of Kerala would not enable the applicant to claim that status in Lakshadweep. As is seen in Annexure A2 notification, applications were invited from qualified local candidates. The applicant's mother, being from outside Lakshadweep, she cannot claim local status and for extending the benefits of ST reservation. Similarly, as there is no age relaxation for OBC candidates mentioned in the notification, no such benefit can be claimed by the applicant.

No age relaxation has been mentioned for candidates appearing for open competitive examination. The applicant was clearly in the know of these restrictions and had willingly taken part in the selection. Hence she is estopped from raising objections at a later stage. The applicant has been working on contract basis under the Lakshadweep Administration. A contract employee cannot claim the status of a government employee and no age relaxation can be claimed on that count.

6. The 3rd respondent has filed a reply statement, also rebutting the contentions of the applicant. It is stated therein that the applicant's reliance on Annexure A6 judgment and Annexure A7 Office Memorandum are misplaced and irrelevant to the issue being considered here. It is further stated that the applicant had approached this Tribunal by filing OA/181/1011/2016 and this fact had been concealed by her while filing this OA. An interim order was passed in her favour which was subsequently vacated. The applicant had sought permission to withdraw the said OA at that stage.

7. The applicant has filed a rejoinder reiterating her contentions raised in the OA.

8. Heard Smt. Smitha Gangesh, learned counsel for the applicant and learned Standing Counsel for the Lakshadweep Administration as well as Sri Ziad Rahman, counsel appearing for respondent No.3 on behalf of M/s Sheriff Associates. Smt. Gangesh argued at length that the applicant had come out on top, scoring the first rank in the open competitive examination. She submitted that the applicant does not wish to pursue the claim of reservation on account of ST or OBC category. Instead, she emphasized the fact that the applicant is an employee of the Government of Lakshadweep. For this purpose, she drew our

attention to Annexure A5 order of Lakshadweep Administration dated 2.9.2015 appointing her as Junior Engineer (Civil) on contract basis for a consolidated pay of Rs.15000/-. She further referred to Annexure A7 OM dated 10.4.1969 issued by the Ministry of Home Affairs wherein relaxation of prescribed age limit in favour of government servants appointed on ad-hoc basis for direct recruitment is mentioned. The learned standing counsel for Lakshadweep Administration as well as Sri Ziad Rahman for the party respondent, argued that she was not eligible for reservation of any kind, being not an islander and thus not a local candidate. In so far as the claim of being eligible for age relaxation as a departmental candidate is concerned, they contended that a contract employee is not a government servant and thus is not eligible for any relaxation on that count.

9. We have considered the pleadings made by the applicant as well as the respondents. The learned counsel for the applicant did not pursue one of the grounds that had been put forward in the OA, i.e., of claiming that she is a local candidate entitled to ST status, failing which, she ought to be considered as an OBC candidate and thus eligible for 3 years age relaxation as per Annexure A10.

The sole argument put forward in favour of the applicant's case rested on the contention that she is a departmental hand and thus entitled to age relaxation mentioned in the notification. We do not see much merit in this argument. In the order in TA 23/2011 of the Principal Bench (Annexure A6), the subject of granting age relaxation to adhoc/casual/contract employees has been dealt with thus:

“14. Even in those matters where cases of ad-hoc/casual/contract employees come up for consideration for regular appointment, there has always been a practice of giving age relaxation. In many judgments rendered by the Apex Court as well as this Court such relaxation is provided and the relevant aspect which is to be kept in mind is that at the time of initial appointment on contract/casual basis the incumbent was

within the age limit and was not overage. If that is so, to the extent of service rendered by such an employee, the benefit thereof has to be given. If the relaxation of almost 10 years is to be given to the respondents for having worked for this period, in that case also they would fall within the prescribed age limit.”

This judgment has been produced by the applicant's side. However, on examining her appointment order as a contract employee, which only dates back to 2015 and considering her age on the date of employment notice as 34 years and 8 months, she cannot claim any benefit on account of this contention. Thus she did not fulfill the eligibility criteria for availing relaxation of age as per the employment notice on any count such as local status, ST/OBC category or departmental employee. The OA fails and is dismissed. No order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

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Annexures filed by the applicant:

- Annexure A1: Copy of order F.No.2/3/2014-C1/1733/1530 dated 25.11.2016 issued by 2nd respondent.
- Annexure A2: Copy of Employment Notice F.No.2/3/2014-C1/2126 dated 18.12.2015 issued by 2nd respondent.
- Annexure A3: Copy of the check list published by the 2nd respondent on 22.4.2016.
- Annexure A4: Copy of rank list published by the 2nd respondent dated nil.
- Annexure A5: Copy of the appointment order issued to the applicant.
- Annexure A6: Copy of the order passed by the CAT, Principal Bench in TA 23/2011 dated 30.1.2012.
- Annexure A7: Copy of Office Memorandum dated 10.4.1969 issued by the Ministry of Home Affairs.
- Annexure A8: Copy of e-mail dated 20.8.2016 preferred on behalf of the petitioner to the 2nd respondent.
- Annexure A9: Copy of representation dated 14.8.2016 preferred on behalf of applicant to the 2nd respondent.
- Annexure A10: Copy of office memorandum dated 25.1.1995 issued by the Department of Personnel & Training.

Annexure filed by the respondents:

- Annexure R3(a): Copy of the order passed by this Tribunal on 5.12.2016 in OA/181/1011/2016.