

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

OP (CAT).No. 138 of 2015 (Z)

PETITIONER/APPLICANT:

AZHARALI K.P.
HAJARABIYODE HOUSE, CHETLAT ISLAND,
UNION TERRITORY OF LAKSHADWEEP,
PIN - 682 554

BY ADVS.SRI.SHABU SREEDHARAN
SRI.JOLLY GEORGE
SRI.K.P.UNNIKRISHNAN
SRI.T.S.PRASANNAKUMAR
SRI.K.V.PREMSANKAR
SMT.RESHMA ABDUL RASHEED

RESPONDENTS/RESPONDENTS:

1. UNION TERRITORY OF LAKSHADWEEP
REPRESENTED BY THE ADMINISTRATOR, KAVARATTI ISLAND,
PIN - 682 555.
2. THE DIRECTOR (SERVICES)
OF UNION TERRITORY OF LAKSHADWEEP, KAVARATTI ISLAND
PIN - 682 555.
3. SAKEER HUSSAIN B.M.
BIRIYOMMADA HOUSE, KADMAT ISLAND,
UNION TERRITORY OF LAKSHADWEEP,
PIN - 682 556.

R1 & R2 BY SRI. S. RADHAKRISHNAN, SC.

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 07-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 138 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 - THE TRUE COPY OF THE OA NO.181/00012/2014 ALONG
WITH THE ANNEXURES A1 TO A9 THEREIN DATED 27.1.2014

P2 - THE TRUE COPY OF THE REPLY STATEMENT WITH THE
ANNEXURES R1 (A) TO R1 (C) IN THE OA DATED 16.9.2014

P3 - THE TRUE COPY OF THE REJOINDER DATED 30.6.2015

P4 - THE FREE COPY OF THE ORDER IN OA NO.181/00012/2014
DATED 8.7.2015 PASSED BY THE CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(CAT) No.138 of 2015

Dated this the 7th day of September, 2015

JUDGMENT

Surendra Mohan,J.

The petitioner has filed this Original Petition challenging the order dated 08.07.2015 of the Central Administrative Tribunal, Ernakulam Bench in Original Application No.181/00012/014 dismissing the application filed by the petitioner. The petitioner as well as the 3rd respondent were applicants for selection to the post of Multi Skilled Employees by direct recruitment under the quota reserved for disabled persons. Annexure – A3 produced along with Ext.P1 in the Original Application is the copy of the Employment Notice. The Employment Notice provided that, the duly filled in application form should be received on or before 25.06.2013, positively. Applications received without required documents and after due date would be rejected without any intimation. Annexure – A5 initial check list produced along with Ext.P1 shows the name of the 3rd respondent as ineligible for the reason that the validity of

certificate produced by him had expired. The complaint of the petitioner herein is that in violation of the specific stipulation in the Employment Notice that, defective applications would be summarily rejected, time was granted to the 3rd respondent to produce a fresh medical certificate, on the strength of which, he has been selected. The petitioner is also a disabled person who had submitted an application that was complete and valid in all respects. Therefore, it is contended that the selection of the 3rd respondent has prejudiced the rights of the petitioner. The Central Administrative Tribunal considered the contentions of the petitioner. Respondents 1 and 2 had contested the proceedings before the Central Administrative Tribunal pointing out that since the people at Lakshadeep were not well educated, it was the usual practice of the said respondents to grant time to the candidates to rectify any defects that were detected in the initial check list. Such an opportunity was usually being granted considering the special circumstances in which the people of Lakshadeep are placed. In the case of the 3rd respondent, a certificate had been produced which showed that the said person was deaf. His disability was assessed at 75%. However, the

certificate produced by him had specifically stipulated that the same was only for a period of three years, which period had expired. It was for the said reason that he was shown as ineligible in Annexure - A5. Therefore, he was granted time to cure the defect along with other candidates. Within the time stipulated, he had produced a certificate issued by the District Medical Board, Ernakulam which has substantiated his claim of disability. It was on the basis of the said certificate that he was considered for selection. The Central Administrative Tribunal has found there was no infirmity in the procedure that was adopted. According to the counsel for the petitioner, having stipulated in the Employment Notice that the defective applications would be summarily rejected without any intimation whatsoever the action of respondents 1 and 2 in granting time for rectification of the defect was arbitrary and unsustainable. Therefore, he seeks interference with the order of the Central Administrative Tribunal.

2. We have heard the learned Standing Counsel Sri. S. Radhakrishnan who appears for respondents 1 and 2 also. It is true, the Employment Notice has stipulated that, defective

applications should be summarily rejected . However, the case of the respondents 1 and 2 is that, considering the peculiar social circumstances in which the people at Lakshadeep are placed, it has been their usual practice to afford an opportunity to the candidates to rectify the defects after publication of the initial check list. It is only the said usual practice that was adopted in this case also. The above being the position, we are not satisfied that there has been any infirmity in the procedure that was adopted by respondents 1 and 2. We notice that the petitioner does not have a case that the 3rd respondent was not disabled. His only grievance is that, the 3rd respondent had been given an opportunity to rectify the defect by producing a proper medical certificate. The 3rd respondent is a person who is deaf. The said disability has been certified to be continuing, by the District Medical Board, Ernakulam. He had been shown as ineligible for the only reason that the certificate produced by him was of the year 2010, which stipulated that it was valid only for a period of 3 years. The said period had expired as on the date of application. Therefore, the 3rd respondent was not a person who was not disabled as on the date of the application. The action of

the respondents 1 and 2 granting an opportunity to the 3rd respondent to rectify the defect cannot be said to be arbitrary, as contended.

For the above reasons, we find no ground to entertain this Original Petition or to grant any of the reliefs sought for. The Original Petition is, therefore, dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv