

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

OP(KAT).No. 79 of 2015 (Z)

AGAINST THE ORDER IN TA 5658/2012 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 01-09-2014.

PETITIONER(S)/RESPONDENTS 1 TO 3 IN T.A:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, KERALA - 695 001.
2. THE DIRECTOR OF SURVEY AND LAND RECORDS,
THIRUVANANTHAPURAM - 695 001.
3. THE SUPERINTENDENT OF SURVEY AND LAND RECORDS (RANGE),
VADAKKANANCHERI, THRISSUR, KERALA - 678 683.

BY SENIOR GOVERNMENT PLEADER, SMT. REKHA VASUDEVAN

RESPONDENT(S)/APPLICANT IN T.A:

N.N. JANEMEJAYAN,
WORKING AS HEAD SURVEYOR,
OFFICE OF THE SUPERINTENDENT OF SURVEY
AND LAND RECORDS (RANGE),
VADAKKANANCHERI, THRISSUR, KERALA - 678 683.

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON
28-09-2015, ALONG WITH OPKAT. 81/2015, OPKAT. 83/2015, OPKAT. 84/2015, OPKAT.
88/2015, OPKAT. 90/2015, OPKAT. 96/2015, THE COURT ON 20.10.2015 DELIVERED THE
FOLLOWING:

P.T.O.

OP(KAT).No. 79 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1 - TRUE COPY OF THE WRIT PETITION TRANSFERRED AND NUMBERED AS T.ANO. 5658/2012 ALONG WITH THE ANNEXURES FILED BEFORE THE TRIBUNAL.

EXHIBIT P2 - TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT.

EXHIBIT P3 - TRUE COPY OF THE ORDER DT. 1.9.2014 OF KERALA ADMINISTRATIVE TRIBUNAL IN TA NO. 5658/2012.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

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

O.P. (KAT) Nos.79, 81, 83, 84, 88, 90 & 96 of 2015

Dated this the 20th day of September, 2015

JUDGMENT

Shaji P. Chaly, J.

These Original Petitions arise from the orders in T.A. Nos.5658 & 5985 of 2012, O.A.Nos.372 & 2740 of 2013, O.A.No.810 of 2014, T.A.No.5897 of 2012 and O.A.No.37 of 2013, respectively. By the said orders, the learned Kerala Administrative Tribunal allowed the applications and quashed the orders cancelling the probation declared, directed to declare probation of those Respondents not declared and granted further consequential reliefs with regard to the service benefits of the Respondents.

2. These Original Petitions filed by the State and its Officer present a common question for consideration, whether the Respondents are liable to pass the tests provided under Rule 6 of the Kerala Survey & Land Records Subordinate Service Rules, 1966 for the declaration of their probation in the post of Head Surveyor?

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3. Since the Original Petitions are mainly concerned with the aforesaid common question of law, we are disposing of the same together by this common judgment. The facts are common in nature and if at all any individual description of facts are required, they will be stated accordingly.

4. The Respondents are Head Surveyors working in the Survey and Land Records Department. Initially they joined in the service as Surveyor Grade-II, later promoted as Surveyor Grade-I and subsequently they were promoted as Head Surveyors on various dates. The next promotion post to which the Respondents are entitled to is the Superintendent of Survey and Land Records. As per the Special Rules specified above, as it originally stood, they had to pass various tests for promotion as Head Surveyor. But, consequent to the amendment made as per G.O.(P) No.491/1993/RD dated 08.11.1993, Rule 4 was amended and the requirement of passing various tests for promotion up to the post and inclusive of Head Surveyor was deleted from the Special Rules.

5. Taking into account the amendment so made to the Special Rules, the Respondents were entitled to get their probation declared in the post of Head Surveyor without

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insisting for the tests earlier prescribed. Accordingly, petitioners have declared probation of some of the Respondents, while the probation of some of the Respondents were yet to be declared. Later, 1st petitioner by letter No.7796/E1/08/RD dated 22.05.2009 directed the 2nd petitioner to cancel the probations already declared in respect of the Head Surveyors, stating that they had not passed the tests specified in Rule 6, and accordingly 2nd petitioner by his order No.Survey/G3-1786/09 dated 22.05.2009 cancelled the probation declared in favour of some of the Respondents. Even though representations were preferred against the said orders, they were dismissed and it is challenging the said orders passed by the petitioners, some of the Respondents filed writ petitions before this Court, which were later transferred to the Kerala Administrative Tribunal on its constitution. The said Transfer Applications were disposed of along with Original Applications filed before the Tribunal, by different set of orders. After considering the evidence on record, the Tribunal allowed the said Applications holding that since the amendment made to the Special Rules referred *supra* was deleted, the requirement of passing the tests for

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promotion as Head Surveyor, cannot be re-introduced by insisting passing of the tests having recourse to Rule 6. It was further held that Rule 6 of the Special Rules is only applicable to direct recruits and not the promotees. Therefore, the Tribunal quashed the orders of cancellation of the probation already declared, directed to declare the probation of the Head Surveyors which are not declared, without insisting for a pass in the tests if they are otherwise competent and further directed to provide consequential service benefits to all the Respondents. It is challenging the said orders of the Tribunal, the petitioners have filed the Original Petitions.

6. We have heard Smt. Rekha Vasudevan, the learned Senior Government Pleader appearing for the petitioners and the learned counsel for the Respondents, Sri. Pirappancode V.S. Sudheer, Smt. I. Sheela Devi and Sri. Sajan T.P.

7. Learned Senior Government Pleader has contended that appointment to the post of Head Surveyors is by direct recruitment and by promotion of Surveyors Grade-I in the ratio of 1:1 and certain tests were prescribed in the Special Rules for promotion, which the promotees have to clear as a condition precedent for promotion. Learned Senior

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Government Pleader further contended that by an amendment made to the Special Rules in 1993, the requirement of passing the tests for promotion was deleted from the Special Rules since the Government decided that acquisition of Departmental Tests qualification need not be insisted upon in the case of executive staff like the Surveyors and Draftsmen. It was further contended that while deleting the requirement of passing the tests for promotion up to the post of Head Surveyor, the requirement of passing the tests for declaring probation in the post of Head Surveyor as specified in Rule 6 of the Special Rules was not altered or amended and the same was intentionally retained in the Special Rules. Thereby Surveyor Grade-I promoted as Head Surveyor, within the period of probation was required to pass the tests specified in Rule 6 and only such persons who had already passed such tests are exempted to have their probation declared. It was thus contended that even though Rule 4 of the Special Rules was amended giving a go by to the tests prescribed for effecting promotion, by virtue of Rule 6, every Head Surveyor in order to get his probation declared should pass the tests as prescribed in Rule 6. Learned Senior Government Pleader

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further contended that the tests prescribed under Rule 6 is to be undergone by the direct recruits and persons appointed by transfer. But the promotees have to pass the tests within a period of one year within a continuous period of two years, whereas the direct recruits are liable to pass the tests only within a period of two years within a continuous period of three years in order to declare their probation. It was further contended that the declaration of probation is applicable to all categories under the Special Rules and therefore it was clear that by making amendment by deleting the requirement of passing the tests for the purpose of promotion, the Government did not intend to exempt the Respondents from acquiring the tests qualification for declaration of the probation.

8. It was further contended by the learned Senior Government Pleader that even though Rule 13A of the Kerala State and Subordinate Services Rules, 1958, in the case of Scheduled Castes/Scheduled Tribes, the State Government is entitled to grant exemption from passing the tests for specified period and such persons who get exemption from passing the tests for promotion, necessarily had to pass the tests for

declaration of probation. It was also contended that since in spite of the amendment to Rule 4, Rule 6 was not tinkered with and cautiously retained by the State Government, thereby meaning that the promotees in the post of Head Surveyor had to necessarily pass the tests specified in Rule 6 during the period of probation. Therefore, learned Senior Government Pleader contended that any other interpretation given to Rule 6 will defeat the purpose, purport and intent of the legislation.

9. Learned counsel for the Respondents, on the other hand, contended that consequent to amendment of the Special Rules in 1993 for the posts of Head Surveyors and below, the Departmental tests need not be made obligatory. It was contended that earlier the minimum qualification prescribed for Surveyor was S.S.L.C and Chain Survey Test. Further training in Higher Survey is given departmentally and also they acquire the field experience which enriches their knowledge and skill. It was thus taking into account the said aspects, the 1st petitioner, State Government have decided not to insist for any Departmental test qualifications for promotion up to the posts of Head Surveyor and Head Draftsman. It was further contended that while the probation of some of the

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Respondents were declared, the State Government was conscious of the fact that consequent to amendment to Rule 4 of the Special Rules, the passing of the tests was given a go by and therefore cancellation made by the Government after several years of declaration of probation, was not in accordance with law. Yet another contention advanced by the learned counsel for the Respondents was that as per Rule 4 as it originally stood, the Respondents were to pass the Departmental Tests for acquiring promotion and even at that point, Rule 6 of the Special Rules was in vogue for the purpose of declaration of probation for the direct recruits in the post of Head Surveyor. Therefore, it was contended that while deleting the requirement of tests qualification as per the amendment in 1993, so far as the promotee employees are concerned, the tests were given a go by. After having done so, it was not proper, fair and legal on the part of the Government to have re-introduced the passing of tests for declaring probation as provided under Rule 6. It was further contended that the requirement of passing the tests as provided under Rule 6 is applicable only to direct recruits. It was also contended that the Respondents have passed the

tests during the course of their service in various categories and therefore it was not incumbent upon the Government to insist the Respondents to have the tests qualification for declaration of their probation.

10. Having considered the rival submissions and going through Rule 4 as it originally stood, Rule 6 and the amended Rules of 1993, we think it appropriate that the Explanatory Note to the amendment notification of 1993 be extracted:

" ***Explanatory Note***

(This does not form part of the notification, but is intended to indicate its general purport).

The Director of Survey & Land Records Department has recommended that for promotion to non-gazetted posts like Head Surveyor, departmental tests need not be made obligatory. The Board or Revenue has also recommended abolition of test qualification. Government have examined these recommendations. Surveyors and Draftsmen are required to possess technical qualification before their probation is declared. The minimum qualification for recruitment as Surveyor is S.S.L.C. and Chain Survey Test. Further, training in higher survey is given departmentally. Also on the job, they require field experience which enriches their knowledge and skill. In respect of comparable positions in other technical departments like P.W.D. there are no departmental tests for junior Engineers and I Grade Draftsmen.

Hence, Government have decided that acquisition of departmental test qualification need not be insisted upon in the case of executive staff like the Surveyors and draftsman for promotion up to and including the cadre of Head Surveyor and Head Draftsman. Government consider it necessary to amend the special rules for the purpose.

This notification is intended to achieve the above object.”

11. On a reading of the Explanatory Note, we are of the clear opinion that by introducing amendment to Rule 4, the State Government have considered various aspects, including the experience, skill and knowledge acquired by the Respondents during their course of employment in various categories, and have decided that the passing of tests as prescribed under the Special Rules is to be given a permanent go by for the purpose of promotion. Which, according to us, means that the Respondents who have acquired sufficient experience are not to be compelled for acquiring the Departmental Tests qualification. In effect, the conscious decision of the Government was to exempt the Respondents from such an exercise. In that view of the matter, it is not a correct approach on the part of the State Government to re-introduce the Departmental tests by invoking Rule 6, as it

stood, for the sole purpose of declaration of probation of the direct recruits while unamended Rule 4 was in vogue. The said view is supported by the fact that Rule 4 as it originally stood, insisted for the pass of Departmental Tests in order to secure promotion and therefore when Rule 4 was deleted and the tests qualification was given a go by, it is to be legally presumed that Rule 6 which stood unamended was only for the purpose of insisting direct recruits to acquire tests qualification for declaration of their probation alone.

12. Rule 4(b) which prescribes other qualifications as it originally stood reads as follows:

"Rule 4(a)	x	x	x	x	x	x	x	x	x
x	x	x	x	x	x	x	x	x	x
x	x	x	x	x	x	x	x	x	x

(b) Other qualifications.-- *No persons shall be eligible for appointment to the posts specified in column (1) of the table below and by the method specified in column (2) unless he possesses the qualification or has passed the test specified in the corresponding entry in column (3) thereof:*

TABLE

<i>Posts</i>	<i>Method</i>	<i>Qualification or test</i>

(1)	(2)	(3)

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1. Head Surveyor	Direct recruitment	Must possess the B.A., B. Sc., or B. Com. degree of any recognised University. Preference shall be given to persons who have taken Mathematics for the degree course.
	Promotion	Must have passed-- 1. Head Surveyor's Selective Test (Travancore) or Theodolite Survey Test and Mapping Test (Cochin) or Head Surveyor's and Sub Assistant's Test (Madras). 2. Account Test (Lower) or Account Test for Executive Officers."

13. The Special Rules were amended by S.R.O. No.1949/93, by which to the cadre of Head Surveyor under sub-rule (b) of Rule 4, the method of 'promotion' in Column (2) and the entries under "Qualification or test" in column (3) against the post "Head Surveyor" in column (1) was omitted. Therefore, by the said amendment, the State Government have consciously taken away the tests qualification required for the purpose of promotion. Therefore, we find force in the contention made by the learned counsel for the Respondents that since Rule 4 of the Special Rules was amended and Rule 6

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was retained in the statute book, the purpose or intention behind the same was only to see that the inexperienced direct recruits have to acquire the tests qualification in order to have their probation declared. To put it otherwise, the Respondents who had sufficient experience, skill and knowledge in various categories are placed on a different pedestal from the direct recruits.

14. The learned Tribunal while disposing of O.A.Nos.2740 & 37 of 2013 against which O.P.(KAT) Nos.84 & 96 of 2015 are preferred, held in paragraph 2 that *"Annexure-A4 amendment was introduced based on the recommendations of the Director of Survey and Land Records and the Revenue Board. The Government positively found that it is unnecessary to insist the clearance of various tests by First Grade Surveyors for promotion. Till the issuance of Annexure-A4, Rule 6 of the Special Rules had no application to the promotees because they got promotion only after clearing the tests. That means, it was intended only for the direct recruits. But by the present stand taken by the Government, the effect of Annexure-A4 doing away with the requirement of passing the tests is nullified. While direct recruits get two years for*

clearing the tests, the promotees are getting only one year to clear the tests because the probation period of promotees is one year. The re-introduction of the requirement of passing the tests for the promotees by the Government does not appeal to reason. The interpretation which makes the tests in Rule 6 applicable to them in unjust and irrational. The interpretation sought to be placed on the words of Rule 6 will have the effect of obliterating Annexure-A4. So, such an interpretation should be avoided and the one which effectuates the purpose of the amendment should be accepted.” The learned Tribunal thereupon declared that the probation of the applicants in those cases, were declared rightly without insisting for the requirement of the tests qualifications mentioned in Rule 6 and accordingly the orders passed by the petitioners were quashed and further consequential reliefs with regard to the service benefits were granted.

15. It was following the orders in those Applications, the Tribunal allowed the other Original Applications filed by the Respondents herein. On a totality of the circumstances and appreciating and evaluating the Rules, pleadings and evidence on record, we are of the considered opinion that the view

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taken by the Tribunal cannot be found fault with, especially due to the fact that prior to the amendment, Rule 4 and Rule 6 were placed on different pedestals and by amending Rule 4 alone, the Government consciously intended that the tests qualification prescribed under Rule 4 for the promotees should be given a go by. We are also of the opinion that re-introduction of the said requirement in a circuitous manner by taking cue from Rule 6 of the Special Rules cannot be sustained, it being illegal, irrational and unfair. In that view of the matter, we do not find any justifiable reason to interfere with the orders of the Tribunal in the aforesaid cases. Therefore, the question presented by the petitioners referred *supra* is to be answered against the petitioners and in favour of the Respondents.

Resultantly, the Original Petitions fail and accordingly they are dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE
Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
20.10.2015