
(2021) 10 CAT CK 0024

In the Central Administrative Tribunal

Case No : Original Application No. 181, 00707 Of 2016

Jiyath Hussain K P

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 12-10-2021

Acts Referred:

Citation : (2021) 10 CAT CK 0024

Hon'ble Judges : P. Madhavan, Member J; K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : N. Unnikrishnan, Mini R. Menon, S. Manu

Final Decision : Dismissed

Judgement

P. Madhavan, Member J

1. This is an Original Application filed by the applicant seeking the following reliefs:

"i) Call for the records leading to the delay in completing the selection proceedings pursuant to Annexure A8 for the post of Gumastha/Amin under the 3rd respondent;

ii) Declare that 3rd respondent is bound to finalize the proceedings on Annexure A8 within a reasonable time;

iii) Issue appropriate order or direction to respondents No. 2 and 3 to finalize the proceedings on Annexure A8 within a reasonable time;

vi) Issue such other appropriate orders or directions as this Hon'ble Tribunal may deem fit just and necessary;

and

vii) To grant cost of this Original Application."

2. The applicant's case is that respondent No. 3 in this case had issued a

notification for selection to the post of Amin/Gumastha and after obtaining the applications from qualified candidates they are not completing the process of selection and the action of the respondents has no justification. According to the applicant, he belongs to Scheduled Tribe community and he has passed Secondary School Leaving Certificate examination conducted by the Board of Public Examination, Kerala. He also passed Senior Secondary School Examination from the National Institute of Open Schooling, New Delhi. The applicant has passed Survey Test Lower Examination conducted by the Survey & Land Records Department, Government of Kerala. He also passed the examination of 3 months computer course. He also passed diploma in Electronics Engineering conducted by All India Technical Education Society, Trissur. Further he passed the advance surveying using the total station with theory and practical training examination with Grade A+ from the Institute of Free Land Survey, Thamarassery, Kozhikode. According to him he is fully qualified for applying to the post of Amin/Gumastha issued as per Annexure A8 notification issued by respondent No. 3. The qualification prescribed for the employment was i) SSLC or equivalent, ii) certificate course in computer not less than three months and chain survey (lower) certificate from a Government/State recognized institute as desirable qualification. Accordingly, he applied for the post. The respondents have not conducted any interview or test and no merit list has been published. According to the applicant it is due to some kind of foul play to avoid the candidates from the Kiltan Islands, that the selection process had not been completed.

3. The respondents entered appearance and filed a detailed reply denying allegations made in the OA. They admitted the issuance of notice in the year 2013 for the post of Amin/Gumastha in the pay band 1 with Grade Pay of Rs. 1,800/-. Altogether, 171 applications were received and after scrutiny, 124 candidates were found eligible as per the Recruitment Rules. On verification they found that the candidates who have applied for the post mainly belong to three categories i) who had passed SSLC under the old scheme i.e. out of 600 marks; ii) candidates who had passed SSLC under the new scheme with grade and marks out of 760; and iii) candidates who had passed CBSE Xth English medium. Since the recruitment has to be conducted on merit basis the selection also should be on the basis of merit. But the respondents could not carry out the finalization of the selection due to the confusion regarding how the merit has to be considered in the case of grading of marks by various universities/boards and difference in marks awarded etc. Owing to this confusion the respondents could not even proceed with the selection process and now the Department had decided to re-notify the post of Amin/Gumastha applying the new selection criteria. The applicant is only one among the 171 candidates who had applied for the post. No legal rights are infringed by the respondents. The committee constituted for selection had recommended for incorporating a written test for selection. So the committee decided to re-notify the post and also recommended for giving age relaxation to all the 124 eligible candidates who had earlier applied as per the notification mentioned in this case. The respondents' administration

had also taken a decision to change the selection criteria as well. The selection and appointment of Amin/Gumastha comes within the domain of the administration. There is no illegality committed by the respondents and there is no reason for interference with the decision of the respondents. The respondents produced an order issued by the Lakshadweep Administration showing the criteria to be adopted for selection as per Annexure R2(a) and minutes of the meeting of the selection committee dated 23.6.2016 [Annexure R2(b)].

4. The applicant had filed a rejoinder and also produced a file noting relating to the selection process etc. to show that there occurred an inordinate delay and inaction on the part of the respondents.

5. The counsel for the applicant mainly contended that the respondents had issued notification for selection and selection should be on the basis of qualification prescribed in the Recruitment Rules. As per the Recruitment Rules the qualification essential is SSLC or equivalent and certificate course in computer of not less than 3 months. It is also made clear that land survey (lower) certificate will be considered as desirable. The applicant was fully qualified for applying the post and the respondents had failed to complete the procedure. There is no merit in the contention of the respondents that they could not select the candidates since there was no proper selection criteria published in the notification. According to the counsel for the applicant the respondents are not entitled to change the norms of the game by incorporating selection criteria etc. in it. They have to strictly follow the Recruitment Rules which was in existence on the date of the notification. The respondents have no right to add any other criteria to the Recruitment Rules. Another contention is that the recruitment has to take place on the basis of the vacancies available in an year and arising of any new vacancy cannot be tagged with Annexure A8 notification. The applicant also relied on the decision of the Hon'ble Supreme Court in State of Rajasthan v. R. Dayal & Ors. - 1997 (10) SCC 419 to show that respondents cannot change the rules existed on the date when the vacancy arose. He had also relied on the decision of the Hon'ble High Court of Kerala in Mohanan v. Director of Homeopathy - 2006 (3) KLT 641 wherein it was held as under:

"22.When the position that the Government is empowered to amend recruitment rules even retrospectively is unquestionable, it cannot also be forgotten that after the amended rules have come into force if appointments are allowed to be made from the list prepared in accordance with the unamended rules, notwithstanding the amendment, that would amount to postponing of the date of commencement of the amended rule itself, which no authority other than the Governemnt can do. Therefore, we have no doubt in our mind that once an amendment regarding qualifications and method of appointment etc., in respect of a particular post comes into force any vacancy which arises subsequent to the commencement of the amended rules can be filled up only in accordance with the amended rules notwithstanding the currency of any rank list published by the PSC, selection of which was initiated prior to the amendment of the rules."

He had also produced a decision of the Apex Court in *Y.V. Rangaiah & Ors. v. J. Sreenivasa Rao & Ors.* - AIR 1983 SC 852 wherein the apex court held that preparation of a panel for selection is essential both for increasing administrative efficiency and also for filling up vacancies without delay.

6. The counsel for the respondents on the other hand contended that even though Annexure A8 notification was published, the process of selection could not be completed due to the non-publishing of the selection criteria in the notification. According to them the marks given by various boards and universities are different and they found it difficult to form a list on the basis of merit. There is no written test in the selection as per Annexure A8. So there arose confusion that how the candidates can be short listed and because of which the selection could not be taken forward. Subsequently a committee was constituted for selection and the said committee had taken a decision that a selection criteria has to be incorporated in the notification itself and a written test is necessary for ascertaining the merit of the candidates. They recommended for re-notification of the selection. It is only on the basis of the said recommendation they could not proceed further with the selection process as notified in Annexure A8. According to them there occurred some delay in formulating the decision to issue fresh notification. However, the same could not be completed due to the pendency of the present OA No. 181/707/2016 before this Tribunal. Before the re-notification, the OA was filed and the matter has become sub-judice. So even today nothing has happened and re-notification could not be issued.

7. We have carefully gone through the pleadings of both sides and heard the learned counsel appearing for the parties and we find that the respondents in this case could not complete the selection procedure after issuing Annexure A8 notification. According to the respondents the qualification prescribed for the post was SSLC or equivalent and a certificate regarding computer course. According to them there were three types of candidates who had applied for the post. Some of the candidates had passed SSLC under the old scheme i.e. out of 600 marks and some of them had passed SSLC under the new scheme with grade and marks out of 760 and some candidates who had passed CBSE Xth English medium. So according to them the selection could not be carried out for want of selection criteria for deciding the merit of the candidates. Various universities and boards have different methods of giving marks and grade and it was because of that they could not complete the selection process. Further the respondents have not given the selection criteria in the notification also. Owing to the above difficulty they could not process completing of the selection process. A committee was constituted to consider the course of action and the committee had come to the conclusion that a written test is necessary for these types of appointments and selection criteria should be published in the notification also. So recommended for re-notification of the post and they also recommended granting of relaxation of age for the eligible candidates who have applied for the post as per Annexure A8 notification.

8. On going through the above pleadings it can be seen that the selection process could not be completed due to the practical difficulties which arose after the publication of Annexure A8 notification. Since the Recruitment Rules are silent as to how merit is to be assessed, a selection criteria was necessary for completing the selection process. Even though the Lakshadweep Administration has taken a decision as to how the selection process could be completed and issued guidelines regarding selection criteria, subsequently it could not be implemented as the post has to be re-notified as per the recommendation of the selection committee. It was in these circumstances they could not complete the process. On going through the file produced in this case, we find that the applicant has filed this OA on 17.8.2016 seeking a stay of all further action in this regard and the matter became sub-judice owing to the filing of this OA. The respondents have satisfactorily explained the reasons why the selection could not be completed and what were the circumstances in which they have decided to re-notify the post again. We do not find any arbitrariness or illegality in their action. The decisions relied upon by the counsel for the applicant has no relevance in the issue involved in this matter. There is no amendment to the Recruitment Rules and the administration has not changed the Recruitment Rules as alleged in the OA. The Recruitment Rules have indicated the qualifications, experience, etc. for the post. It is for the administration to take a decision as to what should be the merit criteria for selection. They had only decided how the selection criteria have to be applied. This will not affect the Recruitment Rules as such. So there is no illegality in fixing the selection criteria on the basis of the Recruitment Rules so notified.

9. We do not find any merit in the contention raised by the applicant and accordingly, the OA is devoid of any merit. In the result the OA is dismissed. No order as to costs.