

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A Nos. 445, 459 and 462 of 2011Friday, this the ^{21st} day of October, 2011

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBERO.A.No.445/2011P.Ponkidave @ Noorul Ameen,
Police Constable B No.337,
Kadmath Police Station,
Union Territory of Lakshadweep.Applicant

(By Advocate Mr M.R.Anison)

v.

1. Union of India rep, by its
Secretary to Govt.
Ministry of Home Affairs,
New Delhi-110 001.
2. Union Territory of Lakshadweep Administration,
rep. By its Administrator,
Kavaratti-682 555.
3. The Superintendent of Police,
U.T of Lakshadweep, Kavaratti-682 555.
4. Officer-in-Charge of Kadamat Police Station,
Kadmath Island, U.T of Lakshadweep-682 555.
5. P.Kunhikoya, PC 340,
Police Headquarters, Kavaratti,
U.T of Lakshadweep-682 555.
6. P.I.Kunhikoya, PC 341,
Special Branch Wing, Wellington Island,
Lakshadweep Office, Kochi-682 003.
7. P.Pookunhi, PC 342,
Amini Police Station, Amini,
U.T of Lakshadweep-682 555.
8. K.K.Rafeek Zakariya, PC 344,
Kalpeni Police Station, Kalpeni,
Union Territory of Lakshadweep-682 555.

9. A.K.Shaikoya, PC 345,
Kalpeni Police Station, Kalpeni,
U.T of Lakshadweep-682 555.
10. K.I.Mohamed Koya, PC 346,
Chethlath Police Station, Chethlath,
U.T of Lakshadweep-682 555.
11. N.Pookuni, PC 347,
Androth Police Station, Androth,
U.T of Lakshadweep-682 555.
12. K.P.Muralidharam, PC 348,
Police Headquarters, Kavaratti,
U.T of Lakshadweep-682 555.
13. S.Babu, PC 350,
Special Branch Wing, Wellington Island,
Lakshadweep Office, Kochi-682 003.
14. P.Anilkumar, PC 353,
Special Branch Wing, Wellington Island,
Lakshadweep Office, Kochi-682 003.
15. B.Yousef, PC 354,
Androth Police Station, Androth,
U.T of Lakshadweep-682 551.
16. P.E.Jaffer, PC 358,
Kalpeni Police Station, Kalpeni,
U.T of Lakshadweep-682 557.Respondents

(By Advocate Mrs Deepthi Mary Varghese, ACGSC for R.1)

(By Advocate Mr S Radhakrishnan for R.2 to 4)

(By Advocate Mr R.Reji for R.6 to 16)

O.A.No.459/2011

P.C.Koyakunhi,
Police Constable, B.No.338,
Kadmath Police Station,
Union Territory of Lakshadweep. - Applicant

(By Advocate Mr M.R.Anison)

v.

1. Union of India rep, by its
Secretary to Govt.
Ministry of Home Affairs,
New Delhi-110 001.

2. Union Territory of Lakshadweep Administration, rep. By its Administrator, Kavaratti-682 555.
3. The Superintendent of Police, U.T of Lakshadweep, Kavaratti-682 555.
4. Officer-in-Charge of Kadamat Police Station, Kadmath Island, U.T of Lakshadweep-682 555.
5. P.Kunhikoya, PC 340, Police Headquarters, Kavaratti, U.T of Lakshadweep-682 555.
6. P.I.Kunhikoya, PC 341, Special Branch Wing, Wellington Island, Lakshadweep Office, Kochi-682 003.
7. P.Pookunhi, PC 342, Amini Police Station, Amini, U.T of Lakshadweep-682 555.
8. K.K.Rafeek Zakariya, PC 344, Kalpeni Police Station, Kalpeni, Union Territory of Lakshadweep-682 555.
9. A.K.Shaikoya, PC 345, Kalpenii Police Station, Kalpeni, U.T of Lakshadweep-682 555.
10. K.I.Mohamed Koya, PC 346, Chethlath Police Station, Chethlath, U.T of Lakshadweep-682 555.
11. N.Pookuni, PC 347, Androth Police Station, Androth, U.T of Lakshadweep-682 555.
12. K.P.Muralidharan, PC 348, Police Headquarters, Kavaratti, U.T of Lakshadweep-682 555.
13. S.Babu, PC 350, Special Branch Wing, Wellington Island, Lakshadweep Office, Kochi-682 003.
14. P.Anilkumar, PC 353, Special Branch Wing, Wellington Island, Lakshadweep Office, Kochi-682 003.
15. B.Yousef, PC 354, Androth Police Station, Androth,

U.T of Lakshadweep-682 551.

16. P.E.Jaffer, PC 358,
Kalpeni Police Station, Kalpeni,
U.T of Lakshadweep-682 557.Respondents

(By Advocate Mr Pradeep Krishnan, ACGSC for R.1)

(By Advocate Mr S Radhakrishnan for R.2 to 4)

(By Advocate Mr M.V.Thampan for R.5 to 16)

O.A.No.462/2011

1. A.Sayed Koya,
Head Constable No.316,
Minicoy Police Station,
Minicoy Island,
U.T of Lakshadweep-682 559.

2. Ajithkumar.V,
Head Constable No.314,
Special Branch Unit (Lakshadweep Police),
Beypore, Calicut-35.

(By Advocate Mrs K.P.Geethamani with Mrs Seemanthini, Senior)

v,

1. Union of India rep, by its Secretary to Govt. Ministry of Home Affairs, New Delhi-110 001.
2. Union Territory of Lakshadweep Administration, rep. By its Administrator, Kavaratti-682 555.
3. The Superintendent of Police, U.T of Lakshadweep, Kavaratti-682 555.
4. Officer-in-Charge of Kadamat Police Station, Kadmath Island, U.T of Lakshadweep-682 555.
5. Officer-in-Charge of Special Branch Unit (Lakshadweep Police), Beypore, Calicut-35.
6. Subhash.K.M, HC 309, Androth Police Station, Androth Island, U.T of Lakshadweep-682 551.
7. B.Hamsakoya, P.C.330, Minicoy Police Station, Minicoy Island,

U.T of Lakshadweep-682 559.

8. Sainul Hameed, P.C.334,
Kavaratti Police Station,
U.T of Lakshadweep, Kavaratti-682 555.
9. P.P.Koya, P.C.336,
Kalpeni Police Station,
U.T of Lakshadweep, Kalpeni-682 557.
9. P.P.Koya, P.C.336,
Kalpeni Police Station,
U.T of Lakshadweep, Kalpeni-682 557.
10. P.Kunhikoya, P.C.340,
Police Headquarters, Kavaratti,
U.T of Lakshadweep-682 555.
11. P.I.Kunhikoya, PC 341,
Special Branch Wing, Wellington Island,
Lakshadweep Office, Kochi-682 003.
12. P.Pookunhi, PC 342,
Amini Police Station, Amini,
U.T of Lakshadweep-682 555.
13. K.K.Rafeek Zakariya, PC 344,
Kalpeni Police Station, Kalpeni,
Union Territory of Lakshadweep-682 555.
14. A.K.Shaikoya, PC 345,
Kalpeni Police Station, Kalpeni,
U.T of Lakshadweep-682 555.
15. K.I.Mohamed Koya, PC 346,
Chethlath Police Station, Chethlath,
U.T of Lakshadweep-682 555.
16. N.Pookuni, PC 347,
Androth Police Station, Androth,
U.T of Lakshadweep-682 555.
17. K.P.Muralidharan, PC 348,
Police Headquarters, Kavaratti,
U.T of Lakshadweep-682 555.
18. S.Babu, PC 350,
Special Branch Wing, Wellington Island,
Lakshadweep Office, Kochi-682 003.
19. P.Anilkumar, PC 353,
Special Branch Wing, Wellington Island,
Lakshadweep Office, Kochi-682 003.
20. B.Yousef, PC 354,

Androth Police Station, Androth,
U.T of Lakshadweep-682 551.Respondents

(By Advocate Mr Pradeep Krishnan, ACGSC for R.1)

(By Advocate Mr S Radhakrishnan for R.2 to 5)

(By Advocate Mr M.V.Thampan with Mr M.R.Rajendran Nair, Senior for R.6 to 20)

This application having been finally heard on 14.10.2011, the Tribunal on 21.10.2011 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

As the above three O.As have the same legal issue, this common order is passed in all the three cases.

The details of the applications are as under:-

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2. There are in all two applicants in this O.A. Applicant No. Shri A. Sayed Koya HC No. 316 , a matriculate, posted at Minicoy Police Station is a native of Amini Island

3. Applicant No. 2 Shri Ajithkumar V HC No. 314, a graduate, posted as Head Constable at the Special Branch Unit (Lakshadweep Police) at Beypore, Calicut is a native of Kerala.

4. Both of them were inducted in the service in 1984 and became Head Constables in 2010. They had been conferred with the ACP benefits by being placed in the pay scale of A.S.I. Both the applicants are sufficiently senior in their post of Head Constable. Annexure A-16 refers.

5. The next promotional avenue for the post of Head Constable is A.S.I. And there were 16 vacancies of the said post of A.S.I. In various Islands. These posts are filled up by adopting the provisions contained in the relevant Recruitment Rules 1977 as amended by 1979 and later in 1984 amendment rules.

6. Selection test for the post of ASI (Wireless Operator) and ASI (Radio Technician) was earlier conducted in 2004 but none of those who appeared qualified in the test. Thereafter, the respondents had taken steps to conduct the test for the purpose of which notification was issued by the 3rd Respondent, the Superintendent of Police, U.T. Of Lakshadweep, Kavaratti on 14-03-2011. Annexure A-7 refers. The Fax Message addressed to all OIC PS/CPS in Islands/Inspector APSU Agatti/OIC SB Kochy/OIC SB Beypore dated 14-03-2011 vide Annexure A-7 refers. The Fax message directed the addressees to inform all concerned, including those who were on leave mandated the eligible persons intending to participate in the test to send their willingness in writing to the Superintendent of Police, U.T. Of Lakshadweep. The probable date of promotion test was indicated as Third/Fourth Week of March 2011. This date was then postponed initially for 19th April, 2011 and then 20th April, 2011 was fixed as the date preceded by a training for two days and this information was also faxed to all concerned. Annexure A-9 and A-8 refer. Thereafter, by fax message dated 13th April, 2011, the date was further extended to 28-04-2011 and all the addressees were directed to relieve the Head Constable/Constable (Executive) who have already submitted their willingness and were

matriculates or equivalent with subjects English, Chemistry, Physics and Mathematics, with direction to report before Staff Officer to the Superintendent of Police, latest by 27-04-2011 FN. Those who were away from station on leave/duty were also to be intimated the date of test and to direct them to attend the test at Kavaratti. Annexure A-10 refers. This date was in fact later on changed to 29-04-2011 on which date the test was conducted.

7. In so far as the applicant No. 1 is concerned, he was on leave from 08-04-2011 to 21-05-2011. Before going on leave, the first applicant gave his willingness to appear for the promotion test. It is the case of this applicant that the authorities did not intimate the date of examination during his absence on leave and thus, he was totally unaware of the exact date of examination.

8. As regards 2nd Applicant, he is working at Beypore, and he was informed by the fifth respondent about the conduct of the promotion test and written willingness to appear for the same was given by him. He had also requested for making available the details of syllabus for the test vide Annexure A-19 preceded by Annexure A-20 letter whereby he had requested for the exact date of However, because of non availability of tickets in the available vessel during the relevant period i.e. Last week of April, 2011, none from Beypore could attend the examination. In fact from 25th to 28th April, 2011 there were no High Speed Vessels or Passenger ships as could be seen from the Time Table vide Annexure A-21 and A-22. To substantiate that Applicant No. 2 could not get the

ticket in the Ship (MV Bharat Seema) on 23-04-2011 is evidenced by Annexure A-24 Enforced Halt Certificate issued on 27-05-2011 by the Deputy Director, Supply and Transport, U.T. Of Lakshadweep, Cochin

9. As the applicants could not appear in the test held on 29-04-2011, they had preferred Annexure A-17 and A-18 representations respectively on 13-05-2011 and 14-05-2001. Request was made to arrange for the test in their case. Meanwhile, the respondents published the result in which out of 81 candidates 80 were declared successful vide Annexure A-12 and as per the number of vacancies, 16 persons were sent for necessary training at New Delhi/Bangalore. Impugned order at Annexure A-16 refers. Various grounds including that for sending for training even qualification at the time of consideration for ACP was sufficient as had been done in certain other case had been raised. Certain allegations have been raised against some of the private respondents stating that they had full access to official records by virtue of their posting at a particular place. On the basis of the question paper it was also contended that no test for Radio Technician was conducted and yet four individuals were sent for training. It has also been contended that Seniority has been given a complete go bye and those who were sent for training are all juniors to the applicants (except a few). Yet another ground of attack is that there has been a calculated move to see that the applicants are prevented from appearing for the test so that they could be ignored and juniors would be sent for training. It has also been contended that the reasons for non participation in the examination by the applicants were attributable to the official respondents and they cannot be permitted to encash their own mistake. Further, according to

the applicants, their case is squarely covered by the judgment of the Apex Court in the case of **Union of India vs Remaraj Singh Chauhan**, wherein it has been held as under:-

"It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their Fundamental Right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in the matter of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution."

10. Respondents have contested the O.A. According to them, the first applicant did not express any willingness to attend the test. This applicant had no intention to attend the promotion test. He was aware about the conducting of the test as he was present for duty at Police station for more than 15 days since the issue of the notification. The second applicant did express his willingness to attend the test, but did not attend the test though suitably conveyances were available and arranged. Though the Port authorities were requested for issue of tickets for five police personnel, only three out of five could avail of the same and the applicant deliberately chose not attend the promotion test although ships were available for him to reach Kavaratti from Beypore as well as Kochi and was also advised by the 3rd respondent to avail available conveyance by message dated 12-04-2011. The respondents have come out with the fact that the precise reason for deferring the test from 28-04-2011 to 29-04-2011 was due to the fact that the O i/c Police Station, Minicoy stated that the personnel posted at Minicoy Police Station could not be relieved before 23-04-2011 due to the visit of Hon'ble Union Minister to the island and that they had no conveyance to

reach Kavaratti before 29-04-2011. As regards request for holding a test, it was stated that holding of a further test immediately is not possible as no officer competent to prepare the question papers for the test is available in the communication wing of the organization. In any event there was no bonafide reason for not being able to appear for the examination and the applicants are tempted with the result of the examination and hence they have the change of mind. It has also been stated that vessel was available to reach Kavaratti as one of the private respondents did reach on 28-04-2011. The applicants' claim is that they being senior they would be surely selected to the post. However according to the respondents, seniority alone is not the criteria. Clearance in the qualifying test conducted in the Islands followed by qualifying in the test conducted at the end of the training are all the factors which reckon with, in the promotion. As regards not holding the test in other islands, respondents had indicated lack of sufficient transportation facility in the islands and it was reported that the holding of tests in other islands was not foolproof as proper invigilation by senior officers were not possible and there had been complaints in such tests. Respondents denied that there had been any laches or delay on their part in communicating the schedule of the examination.

11. Private respondents have also filed their reply. They have raised the preliminary objection of misjoinder of the parties inasmuch as they have been unnecessarily dragged into the litigation without any bonafides, sans any cause of action and hence, the OA is liable to be dismissed with exemplary cost in favour of the private respondents. The grounds raised in the Original Application are not true or supported by

any documents, for, when they had obtained information under the RTI, the information they obtained gave the facts diagonally opposite to the ones stated in the O.A. For example, as per the official respondents' reply, the first applicant did not prefer any willingness to sit for the promotion test. As regards the second applicant, he himself is to be blamed on account of his negligence for non appearance in the promotion test. The private respondents had annexed the following documents in support of their various contentions raised in their reply:-

(a) Annexure R-6(a) dated 01-07-2011 issued by the Office of the Officer-in-charge, Minicoy Police Station where the first applicant has been serving. As per this communication, (a) Message regarding conducting of the test vide Fax 14-03-2011 had been circulated among the Police Personnel present in that police station. The first applicant verbally expressed his unwillingness to attend the test on reading the message dated 14-03-2011 stating that he is already in the pay scale of ASI and does not want to undergo the promotion test. Even at the time of receipt of second intimation, the senior lot including the said first applicant expressed their lack of enthusiasm to attend the test. Under the circumstances, the OIC is not bound to inform such person regarding the date of any event for which he has not expressed his willingness or expressed unwillingness.

(b) Fax message from the Secretary to the Administrator addressed to the S.P., Lashadweep referring to the details of ship tickets issued under emergency quota, inter alia to applicant 2 to enable them to attend the promotion test. The fax confirmed the fact of the said applicant requested for journey in the ship on 23-04-2011 but no emergency

quota tickets were allotted to any "for the reason that neither the petitioner nor any of the beneficiaries or their representatives have approached the undersigned" However, those who were really in need of tickets were allotted the emergency quota of Port Department, as the application dated 21-04-2011 was endorsed to them also. Further 15 seats were vacant when the ship actually sailed on 23-04-2011.

12. In their rejoinder to the reply filed by the official respondents, the applicants have alleged that there has been deviation in the procedure adopted in respect of making conveyance available when important functions/meetings/examinations are conducted in a particular port (Annexure A-28 and 29); the change of schedule of examination from 28th to 29th April 2011 had not been intimated to the applicants. Had they been informed, they would have travelled in vessel M.V. Arabian Sea which sailed on 28th April, 2011. The Officer in charge, SB Unit Kochi, for reasons best known to him made arrangement to passport only 3 police constables working in Kochi to Kavaratti for appearing for the test, vide Annexure A-34. The applicants were purposely prevented from writing the examination due to the lapse on the part of respondents 3 to 5. Respondent No. 17 had full access to the question papers and he along with Respondent No. 18 committed the mischief of copying from the answer sheet prepared before the examination date. Even when the malpractice was brought to the notice of the authorities, no action was taken. The very conducting of examination for Radio Technicians is doubtful since even the question paper does not reflect so nor the earlier judgment in OA 199/2010, in pursuance of which the examination was stated to have been held, did not refer to the conducting of the

examination for Radio Technicians. Thus, enhancement of the posts from 12 to 16 was clandestine. Respondent No. 17 in collusion with respondents 18 and 19 working in Kochi Office, deliberately did not give any intimation to the Beypore station about the availability of emergency quota tickets to the applicants in the ship M.V. Bharatseema on 23-04-2011. Change in exam schedule to 29-04-2011 was made only to enable the said private respondents to prepare the answers for the objective question papers to which respondent No. 17 had full access. Even issue of tickets on the date 23-04-2011 was intriguing, in that out of the 2 tickets released on emergency quota for the applicants, in one ticket the spouse of respondent No. 18 travelled and another ticket was utilized by some one else. Respondent No. 5 allotted continuous emergency duties to the second applicant. A separate rejoinder had been filed by applicant No. 1 to the reply filed by the official respondents. He had alleged that persons who were permitted to participate in the examination included even those who did not communicate their express willingness. Presumption by the official respondents that the first applicant was not confident in qualifying in the test is baseless. Annexure A-17 representation had been submitted by the applicant long before the publication of the result of the promotion test.

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13. The applicant Shri P.C. Koyakunhi Police Constable B No. 338 working at the Kadmat Police Station is a merticulate and is a native of the same island. On receipt of the first intimation vide Fax dated 14-03-2001, the said applicant though could not submit his written

willingness, had, before proceeding on medical leave for 30 days from 17-03-2011 orally expressed his willingness to participate in the Promotion test and requested the fourth respondent to apply for his ticket in the next available vessel so as to enable him to reach Kavaratti before 27-04-2011. Kadmath Police station did receive further communication dated 05-04-2011 and 06-04-2011 regarding the date scheduled for the promotion test. Further information on 12-04-2011 was also received indicating the date of promotion test as 28-04-2011. It is the allegation of the applicant that though he had given oral willingness, the fourth respondent failed to make arrangements for issue of tickets for the police constables from Kadmath to Kavaratti to attend the test on 28-04-2011. Duty pass relieving all the six police officials was issued vide Annexure A-8 order dated 25-04-2011. The list does not contain the name of the applicant. Though the applicant tried to have the ticket, he was informed of the non availability of ticket in the speed vessel Black Merline and was to have forced halt upto 28th April, 2011. It was later on that the applicant had come to know about the postponement of the test from 28-04-2011 to 29-04-2011 and on so coming to know, he had made a representation dated 06-05-2011 vide Annexure A-11. According to this applicant, visit of two out of the six persons who were issued passport, when they did not travel in the available speed vessel on 25-04-2011 is a mystery. Through this representation the applicant had requested for arranging for the test. The applicant had referred to another vessel M.T. Bitra which had sailed to Kavaratti on 25-04-2011. The applicant challenges the inaction on the part of the respondents in ensuring his availability in the promotion test. He has also stated that in the past tests were conducted at various islands unlike this time when

the test was held only at Kavaratti. He had alleged malafide in regard to the conducting of the test on 29-04-2011.

14. In their reply, the official respondents have stated as under:-

(a) The applicant did not give any written willingness. According to respondent No. 4 the said applicant never approached him for any permission or facility to proceed to Kavaratti for attending the promotion test though he being a native of Kadmat Island and used to meet the said respondent on daily basis. The said respondent did issue ticket to those who had approached for the same in order to participate in the promotion test. As far as availability of vessel, M.T. Bitra was arranged for extra passengers and while its capacity was fifty, only 24 passengers availed the said vessel. And, the applicant had never approached the third respondent regarding non availability of ticket. In his own leisure hours the applicant, instead of exhibiting his anxiety in not being able to participate in the examination at the appropriate time, made a representation as late as 6th May 2011. Thus, it was due to the conduct of the applicant that he did not participate in the test. He cannot blame the administration on any score in this regard.

15. Private respondents also furnished their reply almost on the above lines. The fact of additional vessel M.T. Bitra having been arranged had been got communicated to the applicant had been confirmed by the Port Authorities at Kadmat vide Annexure R 5(a).

16. Applicant has filed his rejoinder to the above replies filed by official as well as private respondents. That the applicant has expressed his willingness had been evidenced by the wireless message dated 20-03-

2011 vide Annexure A-17. As regards non availability of ticket on 25th April, 2011, the applicant had informed the Kadmath Police station on the very same day requesting them to arrange conveyance to enable him to appear for the promotion test on 28-04-2011, vide Annexure A-18.

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17. The applicant P Ponkidave @ Noorul Ameen (PC B. No. 337) working at Kadmath Police Station is a native of Kilton Island and he entered the services under the respondents in 1987. He had earlier applied for the post of ASI(WO)/ASI(RT) in 2004 but could not qualify and in fact none qualified. He had filed OA No. 258 of 2007, which, however, was dismissed by order dated 06-07-2007. This applicant had expressed his willingness in writing within the stipulated time and he was aware of the changes made in the dates of examination upto 28-04-2011. His name was, however, not included in the request for issue of tickets for enabling the applicant to reach Kavaratti on 28-04-2011. Thus, since the fourth respondent did not apply for Passport to send the applicant to Kavaratti in the available vessel so as to enable him to reach Kavaratti for participating in the Promotion Test, the applicant directly approached the port authorities with a request to issue ticket to him to sail to Kavaratti in the available conveyance on 25-04-2011. However, he was informed by the port authorities that he has to halt at Kadmath upto 28-04-2011 vide Annexure A-12 certificated dated 25-04-2011. The fact of the postponement of the test on 29-04-2011 had not been known to the applicant and on coming to know about the same, he penned a representation on 05-05-2011 vide Annexure A-15 requesting the authorities to arrange for a test for him. The challenge in this OA is that

it was purely on account of the mistake on the part of the official respondents that the applicant could not participate in the promotion test and as such, the respondents cannot be allowed to derive any benefit of their own mistake. He has also alleged that the Recruitment Rules have been deliberately violated by the respondents. According to this applicant also, visit of two out of the six persons who were issued passport, when they did not travel in the available speed vessel on 25-04-2011 is a mystery.

18. Official respondents have in their reply contended that the applicant has to blame himself for not being able to participate in the promotion test as he had not taken due care to ensure availability of ticket. In fact to carry extra passengers, M.T. Bitra had been arranged and the applicant could have travelled in the said vessel, which went only with 24 passengers.

19. Private respondents also filed their reply on the above lines and they have tried to substantiate the fact that the authorities informed the applicant on time about the availability of the said vessel, vide letter dated 04-07-2011 (Annexure R 6(a)).

20. In his rejoinder, the applicant contended that during the relevant time the applicant had been assigned most urgent and confidential duties in Kadmat police station. As regards M.T. Bitra, it has been stated that the same is a Wooden Craft and is a boat coming within "Motor Tug Category", a mobile workshop which is being maintained only to tug the damaged fishing vessel from the sea to the shore for repair

works.

21. In addition to the above, OA 522 of 2011 also relates to the same legal issue. However, as notices to the private parties had not been issued in that case, the same has been de-linked from the above cases.

22. The common thread in all the above three cases is that the applicants, who are admittedly seniors in the post of Head Constables, were not able to participate in the qualifying examination for the post of Assistant Sub Inspectors held on 29-04-2011 at Kavaratti and their claim is that had they been able to participate in the examinations, like others who had participated and qualified and sent for training at New Delhi/Bangalore, these too would have been able to attend the training course. Thus, their prayer is as under:-

Prayer in OA 462 of 2011

- (a) To set aside Annexure A-13 order, since the same is issued in violation of applicants fundamental right under Articles 14 and 16 of the Constitution.
- (b) To declare as invalid the 'Promotion Test' held on 29.04.2011 at Kavaratti for effecting selection and appointment to the post of ASI (WEO and RT) under Lakshadweep Administration, since all senior eligible police personnel in the feeder category were not given opportunity to write such promotion test;
- (c) To direct respondents 2 and 3 to send the applicants for inservice training for appointment to the post of ASI (WO and RT) before sending respondents 6 to 20 who are juniors to them in the PC cadre, based on their pass in the ASI test held on 26.10.2011, as can be seen from Annexure A-26;
- (d) To direct respondents 2 to 5 not to send any persons

included in Annexure A-13 order to in-service training to ASI (WO and RT) post before sending senior persons like the applicants to such training;

(e) To direct respondents 2 and 3 to keep unfilled two post of ASI (WO and RT) under the Lakshadweep, Administration for appointing the applicants to those posts;

(f) To direct respondents 2 to 5 to treat the applicants as senior to respondents 6 to 20 in the ASI cadre post.

Prayer in OA 459 of 2011

(a) To set aside Annexure A-12 order as invalid in the eye of law;

(b) To declare as invalid the 'Promotion Test' held on 29.04.2011 at Kavaratti for effecting selection and appointment to the post of ASI (WEO and RT) under Lakshadweep Administration, since all senior eligible police personnel in the feeder category were not given opportunity to write such promotion test;

(c) To direct respondents 1 and 4 not to send any persons included in Annexure A-12 order to inservice training to ASI (WO and RT) before sending senior persons like the applicant to such training;

(d) To direct respondents 1 and 2 to send the applicant for in-service training for appointing to the post of ASI (WO and RT) post before sending his juniors to such training;

(e) To direct respondents 1 and 2 to keep unfilled one post of ASI (WO and RT) under the Lakshadweep, for appointing the applicant to that post;

Prayer in OA 445 of 2011

(a) To set aside Annexure A-12 order as invalid in the eye of law;

(b) To declare as invalid the 'Promotion Test' held on 29.04.2011 at Kavaratti for effecting selection and appointment to the post of ASI (WEO and RT) under Lakshadweep

Administration, since all senior eligible police personnel in the feeder category were not given opportunity to write such promotion test;

(c) To direct respondents 1 and 4 not to send any persons included in Annexure A-12 order to inservice training to ASI (WO and RT) before sending senior persons like the applicant to such training;

(d) To direct respondents 1 and 2 to send the applicant for in-service training for appointing to the post of ASI (WO and RT) post before sending his juniors to such training;

(e) To direct respondents 1 and 2 to keep unfilled one post of ASI (WO and RT) under the Lakshadweep, for appointing the applicant to that post;

23. Respondents have contested the O.A. According to them, as also according to the private respondents, the applicants had not availed of the opportunity in participating the qualifying examination and on their finding that their juniors had qualified and sent for training, they try to find fault with the administration. In addition, certain wild allegations have been raised against certain private respondents as explained in the rejoinder level which are baseless. Since the applicants themselves have courted such a situation of not being able to participate in the examination, they are not entitled to any reliefs claimed.

24. The Senior Counsel for the applicant has argued that there has been a calculated move to ensure that the applicants who are fairly senior did not participate in the examination. The non furnishing of information about the examination on time, non cooperation of the authorities in ensuring the availability of berth in the vessels to reach the Exam centre on time, the clandestine inclusion of Radio Technician posts

also in the panel, the illegal way by which the private respondents No. 17 and 18 had access to the question papers, the reason for postponing the exam from 28th to 29th April, 2011 to facilitate the said respondents to prepare answer papers would all vitiate the very selection. Again, there is no basis to contend that the applicants were not willing to participate in the promotional test in view of they being placed in higher pay scale under ACP scheme. In Police Department, status counts and decoration on the shoulders with stars is the pride of any police official. As such, all the applicants are desirous of securing promotion as A.S.I. As such, taking into account the peculiar facts in this case, it is appropriate that since the training period had commenced it would only be appropriate that the applicants be also sent for training. In the course of the arguments, the senior counsel submitted that though many of the candidates sent for training fared very well in the promotion test, their performance in the training is understood to be thoroughly disappointing. This would substantiate the fact that there was malpractice such as copying etc., in the promotion test. The senior counsel attributed the entire blame upon the official respondents who ensured that the applicants are nowhere near the examination centre.

25. Counsel for the respondents has argued that there has been absolutely no truth in the allegations. The respondents acted with full responsibility and equal opportunity was afforded to every one concerned. In fact, though written willingness was called for, if for any reason any one could not so furnish the written willingness but presented himself for the promotion test he too would have been admitted. As regards the confidentiality of the question paper, it has

been submitted that the papers were set at New Delhi and a responsible senior officer brought the same in a pen drive. Particulars such as date of examination were filled in with the help of a stenographer who also came from New Delhi. 120 copies were made on the very date of the examination and only 81 candidates participated out of whom save one all others qualified and the first sixteen (on the basis of seniority) been sent for training. As regards promotion, the counsel for the respondents submitted that the promotion test held was only a qualifying test and the seniors amongst the qualified persons were sent for training and that ultimately it is only those who qualify in the training that would be promoted. As such, in the event of there being vacancies after the promotion is granted to the candidates qualified in the training, the same would go to the senior persons amongst the qualified ones in the promotion test. There is no question of the applicants being sent directly for training without their qualifying in the test.

26. Senior Counsel for the private respondents has argued as under:-

In so far as the serious allegations raised by the applicant in OA No. 462 of 2011, as the same had been raised in the rejoinder state, the same are denied and objected to in the arguments and the senior counsel requested that his submission in this regard be recorded and that he be permitted to seek remedies against the applicant concerned independently in accordance with law.

27. Senior counsel has relied upon the following decisions in support of her case:

(a) **State of Maharashtra v. Jagannath Achyut Karandikar** [AIR

1989 SC 1133]

- (b) **Ammini v. State of Kerala** [2000(2) KLT 764]
- (c) **A.P.Showkath Ali v. State of Kerala** [O.P.No.31168/2001(I)]
of Hon'ble High Court of Kerala.

28. Arguments were heard and documents perused. Admittedly the applicants did not participate in the promotion test. Reasons may be any one of the following:-

- (a) They did not choose to participate in the test and it is an after thought that they agitated against the same attributing the blame upon the respondents.
- (b) There was a calculated attempt in ensuring that the senior most is prevented from appearing in the test.
- (c) The non-availability of tickets is purely due to the lapse on the part of the official respondents.

29. Undoubtedly, if the absence of the applicant is on account of their own volition, the question of granting any relief does not arise. Now what is to seek is whether it is on account of any mischief played by either the official respondents or the private respondents that the applicants were prevented from appearing in the test. It is pertinent to mention here that irrespective of whether willingness was given in writing or otherwise, as per the counsel for the respondents, if the applicants had presented themselves for the examination, they would have certainly been permitted.

30 One of the applicants was on leave and he knew before he went on

leave about the proposed conducting of the examination. He had come back from at least 8 days in advance of the scheduled examination. Being in a small island, he would have certainly ascertained the information from his office about holding of the test. Had he wanted, he could have certainly being in a position to ensure a berth in any other vessels to reach Kavaratti. When the communication dated 4.7.2011 annexed by the private respondents goes to show that on more than one occasion, the senior lot including the applicants expressed their unwillingness to participate in the promotion test, it can be safely concluded that applicant No.1 in O.A.462/2011 of his own volition chose not to participate in the test.

31. In so far as applicant No.2 is concerned, even though he alleged that communication could not be sent properly to Beypore a fact remains that he had made an attempt and in one vessel he was not able to get the accommodation. However, when the fax message vide Annexure R-5(d) goes to show that the ship went with 15 vacancies, the same goes to show that this applicant also did not make any serious effort in getting a ticket to Kavaratti.

32. As regards applicant in O.A.459/2011 is concerned, here again the communication dated 4.7.2011 goes to show that ~~he~~ was informed by the authorities of the availability of ship M.T.Bitra and despite the same he did not choose to under the journey.

33. Similarly, in the case of applicant in O.A.445/2011, he was also informed of the availability of M.T.Bitra on 25.4.2011. His explanation

that M.T.Bitra was only had a flowing vessel has to be summarily rejected since it carried various other passengers.

34. That the applicants were not that vigilant and careful in ensuring the arrival on time is evident on the fact that these applicants had requested for arranging for test at a much later date without exhibiting their anxiety and disappointment immediately on their coming to know that they would not be able to sit for the test. As such, the Tribunal is of the considered view that it was neither on account of any mischief by the official respondents much less private respondents that the applicants were prevented from appearing for the test. The applicants have to blame themselves for the same.

35. The Senior Counsel for the applicant submitted that the performance of those undergoing training is not upto the mark as per the information gathered. If so, there is a likelihood of some of them not being recommended for promotion after training in which event such vacancies may have to go for others. In that event, the respondents would be sending the requisite number of candidates qualified in the previous test. Though the applicants are generally to be held to have been less vigil, the geographical situation of the islands and other constraints attendant to such situation are to be pragmatically viewed. As such, interest of justice would be met if the Department conducts a test for the applicants and the other similarly situated persons in advance and in the event of they qualifying in the promotional test, against the vacancies that may be available, if senior amongst the qualified candidates are detailed for training. This arrangement would

satisfy the applicants.

36. In view of the above, these O.As are **disposed** of with the direction to the official respondents that in the event of any necessity to send any further persons for training due to any of the persons already sent declared not qualified in the training, instead of sending the candidates from the qualified list, the applicants and other similarly situated persons may be given a chance to participate in the promotion test and their performance ascertained and on the basis of seniority amongst the qualified candidates, requisite number of candidates may be sent for training.

37. Under the above circumstances, there will be no order as to costs.

K NOORJEHAN
ADMINISTRATIVE MEMBER

Dr K.B.S.RAJAN
JUDICIAL MEMBER

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