

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 470/2005

Friday this the 18th day of August, 2006

CORAM :

**HON'BLE Mr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

B.Sainaba

Formerly Female Nursing Orderly
Indira Gandhi Hospital
Kavaratti, UT of Lakshadweep
Residign at : Briyakkal House
Kavarathi - 682 555

: **Applicant**

(By Advocate Mr. M.R.Hariraj)

Versus

1. Union of India represented by the Secretary
Ministry of Home Affairs
New Delhi
2. Administrator, UT of Lakshadweep,
Kavarathi
3. Director of Health Services
UT of Lakshadweep
Kavarathi

: **Respondents**

(By Advocate Mr. Shafik M.A. (R2-3)

The application having been heard on 18.08.2006, the
Tribunal on the same day delivered the following :

ORDER

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

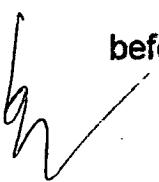
The applicant through this OA has prayed for the following
reliefs:-

- i, To direct the respondents to consider the applicant for regularisation in the post of Female Nursing Orderly or alternatively to consider the applicant for regular appointment considering her selection in Annexure A-3, qualification and experience.
- ii, Direct the respondent to draw and disburse the wages for the period the applicant was engaged from 08.02.2005 as Nursing Orderly at Indira Gandhi Hospital.

[Signature]

2. The brief facts of the case are as under :-

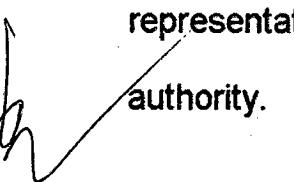
Vide order dated 24.10.1996 (Annexure A-3) the applicant was one of the four candidates selected by the interview Board for MNO/FNO trainee as per which the training was to be imparted to the selected candidates. However, that selection for MNO/FNO trainee would not accord on them any claim for appointment to the post of MNO/FNO. After the applicant had attended the necessary training, she was appointed only in leave vacancies right from March, 1997 as and when such vacancies arose. One Shri Mohammed Ali, a candidate who was ranking No.1 for training vide Annexure A-3 had been accommodated against the regular vacancy with effect from 01.09.1988. The next vacancy was to go for Male Nurse and therefore the applicant could not be considered for the same. Subsequently, the respondents had appointed the applicant on contract basis with effect from 2002. This was after taking an undertaking from the applicant that she would not prefer any claim for regularisation. The department however, initiated action for amendment of the Recruitment Rules for making it compatible to suit the recruitment of the applicant which is stated to be under active consideration but not yet finalised. In the event of the Recruitment Rules being amended the applicant would be given a chance again for appearing before the selection committee for filling up the existing vacancy.



3. While the applicant was awaiting further action for her regular appointment, to be taken by the respondents, in early 2006 an employment notice was published calling for candidates for appointment as MNO/FNO in respect of an anticipated vacancy with effect from 01.06.2006. The applicant who had filed this OA prior to the publication of the aforesaid employment notice has also filed a copy of the said notice through a separate MA.

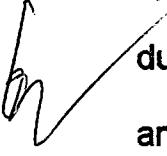
4. The respondents have admitted the above position and in the course of arguments it has been suggested by their counsel that the OA be disposed of with a direction to the respondents to finalise the proposed amendment of the Recruitment Rules so that the applicant would be given a chance to appear before the selection Board. Counsel for applicant has further submitted that the representation preferred by the applicant vide Annexure A-11 dated 29.03.2005 be disposed of.

5. In addition to claim for regular appointment the applicant has also claimed payment of wages for certain period from February, 2005 onwards, in respect of which, no representation is stated to have been made to the appropriate authority.



6. Considering the above facts and circumstances, we are of the considered view that this OA can be disposed of with a direction to the respondents to accord priority to the action for amendment of the Recruitment Rules as stated in para 10 of the reply statement and proceed further with regard to the appointment of the applicant. It is observed from the pleadings that while selecting the candidates for training vide Annexure A-3, all the four individuals so selected were already over aged and one of them viz., Shri Mohammad Ali i was given regular appointment ignoring the overage. In all expectation his appointment would have been made by invoking provisions of Rule 5 of the relevant Recruitment Rules which provides for relaxation of any provisions of the rules with respect to any class or persons. As the applicant was also a selectee alongwith Shri Mohammed Ali, whatever good grounds were there, in making the relaxation for Mohammadali may be made available with reference to the applicant as well and if so, the same may be taken into account, while considering the case of the applicant after amendment of the Recruitment Rule takes place.

7. As regards, non payment of wages since the applicant has not preferred any representation, liberty is given to the applicant to prefer such a representation giving full details of duty performed for which the applicant claims her dues. If such an application is received, the respondents shall, at the



appropriate level, consider the same and if any payment is due, the same shall be paid to the applicant.

8. The above drill of finalisation of the amendment of the Recruitment Rules and subsequent action thereon shall be taken within a period of four months from the date of communication of this order. As regards, consideration of payment of wages, the respondents shall consider the representation as and when filed and finalise the same within a period of six weeks from the date of receipt of the representation.

9. With the above orders the OA is disposed of. No costs.

Dated, the 18th August, 2006.


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K.B.S.RAJAN
JUDICIAL MEMBER

VS