

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 168 of 2011

Original Application No. 239 of 2011

Original Application No. 508 of 2011

Original Application No. 509 of 2011

Monday, this the 21st day of November, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

1. Original Application No. 168 of 2011 -

Hidayathulla KP, aged 28 years,
 S/o. Yusaf KC, Kunhipappada House,
 Agatti Island, UT of Lakshadweep,
 Pin – 682553.

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Applicant

(By Advocate – Mr. E.C. Bineesh)

V e r s u s

1. The Administrator,
 Union Territory of Lakshadweep,
 Kavarathy Island, Pin 682555.

2. The Superintendent of Police,
 Lakshadweep Police Department,
 Union Territory of Lakshadweep,
 Kavarathy Island, Pin 682 555.

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Respondents

(By Advocate – Mr. S. Radhakrishanan)

2. Original Application No. 239 of 2011 -

P. Ibrathulla, S/o. Abdulkhadir, aged 30 years,
 Melappura, Amini, Union Territory of
 Lakshadweep.

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Applicant

(By Advocate – Mr. R. Sreeraj)

V e r s u s

1. The Administrator,
 Union Territory of Lakshadweep,

Kavarathy - 682555.

2. The Superintendent of Police,
Union Territory of Lakshadweep,
Kavarathy - 682 555.

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Respondents

(By Advocate – Mr. S. Radhakrishanan)

3. **Original Application No. 508 of 2011 -**

A. Mohammed Rafeeqe, aged 26 years,
S/o. M.C. Muthukoya, Achammada House,
Amini, Union Territory of Lakshadweep.

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Applicant

(By Advocate – Mr. Geo Paul & Mr. R. Sreeraj)

V e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti.

2. The Superintendent of Police,
Union Territory of Lakshadweep,
Kavaratti.

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Respondents

(By Advocate – Mr. S. Radhakrishanan)

4. **Original Application No. 509 of 2011 -**

K.P. Ismail, aged 19 years, S/o. U. Kasmi,
Kunnampalli House, Agatti, Union Territory of
Lakshadweep, 682 553.

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Applicant

(By Advocate – Mr. Geo Paul & Mr. R. Sreeraj)

V e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti – 68255.

2. The Superintendent of Police,
Union Territory of Lakshadweep,
Kavaratti - 682555.

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Respondents

(By Advocate – Mr. S. Radhakrishanan)

These applications having been heard on 21.11.2011, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

In OAs Nos. 168 & 239 of 2011 the applicants have been selected for appointment as Police Constable (Lascar) and applicants in OAs Nos. 508 and 509 of 2011 the applicants have been selected for appointment as Police Constables. Since they were involved in the criminal cases their appointment was kept in abeyance. Challenging the same these OAs have been filed. We have passed a detailed order on 5.7.2011. The same is reproduced below:-

"All the above four cases raise common questions of law and facts. Applicants in O.A Nos. 508/11 and 509/11 were selected for appointment as Police Constables and applicants in O.A Nos. 168/11 and 239/11 were selected for appointment as Police Constables (Lascar) under the Coastal Security Scheme. But before issuing the actual appointment order, verification reports received from the Police Department reveals that they are involved in criminal cases. Hence, issuance of the appointment orders were deferred, which led to file these Original Applications.

Applicants contended that so long as they are not even charge-sheeted in the criminal cases by the competent Criminal Court and on analogy that promotions cannot be denied and even a sealed cover procedure could not be adopted in case no charge-sheeted is yet framed against the delinquent, it is contended that they should be permitted to undergo training. Pending consideration of the O.A by virtue of an Interim Order passed in each of these cases, the respondents were directed to give them training but in O.A No. 508/11 and O.A No. 509/11 Interim Order was to the fact that the applicants be permitted to undergo training but they would not be issued with any order of appointment without permission from this Court.

Obviously, this Court has passed an Interim Order on a mistaken impression that appointment order itself will be issued only after successful completion of the training. However, while passing the Interim Order in O.A 168/11 and O.A. 239/11, there

was no direction not to appoint them without permission of the Court as was done in other two Interim Orders passed. Hence, the applicants in O.A. 168/11 and O.A. 239/11 were as permitted are undergoing training. The question as to whether a person selected for the post of Police Constable could be permitted to undergo training by way of an Interim Order arrangement had come up for consideration before the Division Bench in Kerala High Court in W.P No. 14907/11 and connected cases. By order dated 21.06.11 after elaborate consideration of the matter, it was held that while the mere existence of a criminal case carries with it the indefeasible presumption as to the innocence of the accused until tried and found guilty, such proposition of law cannot tie down the State Government in the formulation of its opinion as to whether any particular conduct attributed to a person and found reflected in the proceedings pending before the police or the criminal court dis-entitles him to enter such service. It was also observed that the uniformed disciplined force of the police can ill-afford the presence of a criminal or a probable criminal in its cadre. If it is found that there are persons in the police service with criminal antecedent, that will disable them to continue in service in terms of the provisions of law, including Rule 3 of the KSSR Part-II. It is further observed that "If the judiciary were to pass interlocutory orders compelling the establishment to train such person also, in the training centres, in all the different battalions, police camps etc., that will only provide room for growth of unlawful elements, including assemblies, which may ultimately result in hatching of unnecessary groups within the disciplined force. Once a drop of poison destroys the milk, it could never be filtered off to cleanse the milk for consumption. A drop of poison is sufficient. Similar is the case of the uniformed forces also." It was also observed that in the matter of verification regarding the character and antecedents in terms of Note 2 under the provision to Rule 10 (b) (iii) is not one which provides any room for pre-decisional hearing.

The matter came before the Division Bench on a reference made by a learned Judge doubting the correctness of an earlier judgment.

The respondents have filed MA 501/11, 500/11, 497/11, 499/11 in O.A Nos. 168/11, 239/11, 508/11 and 509/11 respectively. The applicants on the other hand have filed MA seeking to implement the order passed in O.A Nos. 508/11 and 509/11.

We have posted all the cases together for hearing. But, only in two matters, reply statement are filed and the other two cases reply statement are yet to be filed. Taking into account of the fact that the Hon'ble High Court has only passed the interim

order and the main case is still pending for further consideration, it would be appropriate to deal with the interim relief based on the interim order passed by the Hon'ble High Court and, if necessary to review the interim order passed in these cases. Accordingly, we heard the learned counsel appeared on either side.

The Court at the time of passing the interim order was obviously under the impression that the appointment order will be issued only after the completion of the training. But, we find that as per the rules regulating the method of recruitment to Group-C posts in the Coastal Security Scheme of Lakshadweep Police Department published as per the notification dated 11th November, 2008, the candidates selected are sent for training after their appointment and there is a further provision that in case they fail to qualify the basic training within three years from the date of appointment their service will be terminated without giving notice. Therefore, appointment precedes the training. In that view of the matter, the orders, which we have passed in O.A 508/11 and O.A. 509/11 are liable to be reviewed.

The next question that arise for consideration is as to whether the interim order should be allowed to continue or should it be vacated? In this context, it has been seen that in O.A 168/11 and O.A 239/11, the final report in the criminal case is submitted before the Court, the applicant is accused in Crime No. 3/06 punishable under Section 448 and 380 of Indian Penal Code. Likewise in O.A 239/11, the applicant was accused in two crimes. He is implicated for offenses punishable under Section 143, 144, 436, 506, 427 and 149 in Crime No. 13/09 and in another Crime No. 15/09 is for offences punishable under Section 448, 436, 427 and 34 of the Indian Penal Code. Therefore, before they were appointed, police verification was done as per the Government of India directions. As such, the involvement of the applicants in different crimes were brought to the notice of the Competent Authority. In the light of the decision of the Hon'ble High Court of Kerala and having due regard to the fact that the applicants are all sent for training including in arms and ammunitions, we cannot compel the appointing authority to give training by an order of a Court especially when they are trained in weapons also. Therefore, having considered all the aspects of the matter, Interim Order passed is recalled and any relief as sought for stands dismissed. It is open to the respondents to withdraw from giving training to the applicants. However, we direct the respondents not to fill up the four vacancies against which the applicants are selected until further orders."

2. Now these OAs are posted for final hearing. The criminal cases are not yet over. In the circumstances the interim order is made absolute and the four vacancies to which the applicants have been provisionally selected shall continued to be kept vacant till the criminal cases are finally disposed of by the first court.

3. OAs are disposed of accordingly. No costs.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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