

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

OA No. 8 of 2005

Tuesday, this the 31st day of May, 2005

CORAM

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. A.K. Habusabi,
Women Police Constable,
Agathi Airport, Agathi,
Union Territory of Lakshadweep. Applicant

[By Advocate Shri V.D. Balakrishna Kartha]

Versus

1. Union of India represented by
The Administrator,
Union Territory of Lakshadweep,
Kavarathi.
2. The Director of Education,
Union Territory of Lakshadweep,
Kavarathi. Respondents

[By Advocate Shri Shafik M.A]

The application having been heard on 31-5-2005, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The claim of the applicant is that she has been selected for appointment as Physical Training Instructor and placed as 1st in the waiting list. According to her, there were only 2 candidates in the select list and they were appointed. It is further averred that there are two more vacancies of Physical Training Instructor but the respondents are reluctant to appoint the applicant as Physical Training Instructor. As per Annexure A1 applications were

invited and she has responded to. As the respondents were not making any appointment, she made a representation also which was rejected by Annexure A7 impugned order in furtherance of a direction given by this Tribunal in an earlier OA No. 690/04. Aggrieved by the said inaction, she has filed this Original Application seeking the following main reliefs:-

"i) To call for the records leading to the issue of Annexure A7 order and set aside the same.

ii) Direct the 2nd respondent to appoint this applicant as Physical Training Instructor in any of the existing vacancy."

2. Respondents have filed a reply statement contending that the number of posts notified as per Annexure A1 was only two and the qualifications prescribed was SSLC with lower grade certificate in Physical Education. One candidate was sponsored by the Employment Exchange and two candidates who were working under the Administration also applied. After the selection, two candidates were placed in the select list and the applicant was placed in the waiting list as No.1. The two selected candidates have already joined the service and still they are working. Hence, both the notified vacancies have already been filled with the selected candidates and no more vacancy exists to appoint the applicant who is only in the waiting list. The above facts were communicated to the applicant by the 2nd respondent on 30-11-2004.

3. The applicant has filed a rejoinder reiterating her contentions in the Original Application and rebutting the pleadings in the reply statement.

4. When the matter came up for hearing, Shri V.D. Balakrishna Kartha, learned counsel appeared for the applicant and Shri Shafik M.A., learned counsel appeared for the respondents.



5. The short question that arises for consideration before this Tribunal is whether the applicant has got any valid legal right to be considered for the post. Admittedly, there were only two vacancies notified as per Annexure A1 and these vacancies have already been filled by the selected candidates. The applicant is only in the waiting list. It is also brought to our notice the position, as far as the wait-listed candidates are concerned, by citing the rulings of the Hon'ble Supreme Court in *Ashok Kumar & Ors. vs. The Chairman, Banking Service Recruitment Board & Ors.* [JT 1995 (8) SC 276], *Madan Lal and Others vs. State of J&K and Others* [(1995) 3 SCC 486], etc. The dictum laid by the Hon'ble Supreme Court is that wait-listed candidate has no legal right unless and otherwise a vacancy is existed during the period. On going through the facts and the averments and the arguments advanced by the learned counsel on either side, we are of the view that the applicant has no legal right for consideration. As such the Original Application is not merited and it is only to be dismissed.

6. However, learned counsel for the applicant submitted that there are vacancies of Physical Training Instructor and those vacancies are to be filled as per the new Recruitment Rules. Learned counsel for respondents submitted that he is not aware of such decision. We make it clear that the applicant is at liberty to make appropriate representation to the competent authority for considering her claim, if any, if she so desires.

7. In the circumstances, the Original Application is dismissed. There is no order as to costs.

Tuesday, this the 31st day of May, 2005



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER