

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH  
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OA No.112/2002

Thursday, this the 20th day of February, 2003.

CORAM :

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

P. Mohammed Kasim,  
S/o Moyamma Koya,  
Lecturer in History,  
Mahatma Gandhi College,  
Androth, UT of Lakshadweep,  
residing at Puthiyedam House,  
Androth, UT of Lakshadweep.

... Applicant

( By Advocate Mr. M.R. Rajendran Nair )

Vs

1. The Administrator,  
UT of Lakshadweep,  
Kavaratti.
2. The Director of Education,  
Kavaratti,  
UT of Lakshadweep.
3. The Principal,  
Mahathma Gandhi College,  
Androth,  
UT of Lakshadweep.
4. Union of India rep.  
Secretary to Government of India,  
Ministry of Human Resources Development,  
Department of Education,  
New Delhi.
5. P.R. Swaminathan,  
Lecturer in History,  
MG College, Androth,  
UT of Lakshadweep. ... Respondents

[ Mr. P.R. Ramachandra Menon(R 1-3)  
Mr. C. Rajendran, SCGSC(R-4)  
Mr. K.S. Hariharaputhran(R-5) ]

The application having been heard on 20.2.2003, the Tribunal on the same day delivered the following :

ORDER

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

By an order dated 27.8.1993 of the Director of Education, UT of Lakshadweep(2nd respondent), the applicant along with 4 others was appointed as Graduate Assistants in the scale of

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Rs.1400-2600 on adhoc basis for a period of 3 months and was put on probation for a period of 2 years. The applicant was posted as Trained Graduate Teacher(TGT)(Social Sciences), Government High School, Minicoy against a newly created vacancy. He joined the post on 15.9.1993 and on the same day he was relieved with direction to report for duty before the Principal, Mahatma Gandhi College, Androth by Annexure A2 order. The applicant was on working arrangement appointed against a post of Lecturer in History on a leave vacancy at Mahatma Gandhi College, Androth. On 18.3.1996 the applicant submitted a representation to the Administrator, UT of Lakshadweep requesting that he be absorbed in the post of Lecturer. Pursuant to this, the applicant was asked to attend an interview on 12.7.1996 which he did. The applicant was appointed as a Lecturer in History in the pay scale of Rs.1640-2900/- and he was posted at Mahatma Gandhi College, Androth against a leave vacancy of Shri P.R. Swaminathan by Annexure A4 order dated 4.9.1996. He was put on probation for a period of 2 years from the date of his joining the post and was also required to attend Intensive Orientation Course within the probation period. In view of the above appointment, the Headmaster, Government High School, Minicoy relieved the applicant from the School service w.e.f. 10.9.1996(FN) directing him to report before the Principal, MG College, Androth. The applicant on 16.9.1998 submitted a representation to the 1st respondent requesting him to take steps to regularise his services in the post of Lecturer in History. Again on 28.10.1999, the applicant made Annexure A6 representation followed by Annexure A7 representation dated 23.3.2000 seeking regularisation in the post of Lecturer. He made another representation on 31.3.2000 claiming pay scale of Rs.2200-4000/applicable to Lecturers in extension of the benefits of this Tribunal's order in OA No.1517/97 and OA No.398/1999. Finding no response from the respondents, the applicant made

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another representation on 2.6.2000 to the 1st respondent stating that he had already completed more than 7 years service as Lecturer in History in MG College, Androth. He also filed OA No.847/2000 claiming the pay scale of Lecturer. The OA was disposed of directing the 1st respondent to consider the representation dated 31.3.2000. Thereafter the applicant submitted a detailed representation. While so, the 2nd respondent informed the Principal, MG College, Androth that permission had been granted to Shri P.R. Swaminathan to rejoin the post of Lecturer in History and directing that the applicant be relieved on his joining with a direction to the applicant for report to the Directorate for further posting. The applicant was thereafter relieved by order dated 16.3.2001(Annexure A10). To the dismay of the applicant by order dated 25.5.2001, the 1st respondent terminated the service of the applicant under Sub-rule (1) of Rule 5 of Central Civil Services(Temporary Service) Rule, 1965 subject to the result of OP No.7294/2001 before the High Court of Kerala. Aggrieved by the termination, the applicant submitted a representation dated 16.6.2001 followed by another representation dated 17.7.2001. The representation was rejected by Annexure A14 order dated 4.10.2001 of the Secretary(Education), UT of Lakshadweep. The applicant has therefore filed this application challenging Annexure A11 order by which the applicant's services were terminated and Annexure A14 order by which his representation was rejected. The applicant challenges these orders on various grounds, that the impugned orders are arbitrary, and that he should be deemed to have confirmed on the post of Lecturer on completion of the probation period of 2 years and having undergone the Intensive Orientation Course in the subject. It is also contended that Shri P.R. Swaminathan, the 5th respondent could not be permitted to rejoin duty because as per leave rules he could have been given leave only for six months. The applicant therefore

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seeks to set aside the impugned orders Annexure A11 and A14, for a declaration that the applicant is deemed to have been confirmed as a Lecturer on completion of two years probation in accordance with the stipulation in Annexure A4, on the vacancy becoming regular consequent on overstyal of leave by Shri Swaminathan, and for a direction to the respondents to treat the applicant as a regular Lecturer and give him all consequential benefits and for a declaration that the applicant is deemed to have been confirmed as TGT on completion of two years probation in the post in accordance with the stipulation in Annexure A1 and for a direction to the respondents to allow him to continue in service at least as a TGT with all consequential benefits.

2. Shri P.R. Ramachandra Menon, Advocate appeared for respondents 1-3, Shri C. Rajendran, SCGSC appeared for respondent No.4 and Shri Hariharaputhran appeared for respondent No.5. Respondents 4 and 5 did not file any reply statement. In the reply statement filed by respondents 1 to 3, it is contend that the applicant was appointed as Trained Graduate Teacher(TGT) on adhoc basis and he was not confirmed in any post, that his appointment was against a leave vacancy and that on the rejoicing of the 5th respondent, applicant has no right for retention in that post. They also contend that the applicant being not confirmed in any post, he is not entitled to the reliefs sought for.

3. After filing of this OA, when the 5th respondent although joined as Lecturer for a short while again took leave from November, 2001 onwards, the applicant filed MA No.575/2002 for a direction to respondents 1 to 3 to allow the applicant to work as Lecturer in History at MG College, Androth pending final disposal of the OA. By Order dated 24.7.2002, the Tribunal directed the respondents to allow the applicant to join and work on the post

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if vacant until further orders or till Shri P.R. Swaminathan returns to duty. Pursuant to the above order, the applicant has been permitted to join and allowed to work against the post. The 5th respondent has not so far joined for duty.

4. When the application came up for hearing today, it is submitted by the counsel on either side that the applicant has been working in a vacant post of Lecturer in the MG College, Androth since 1993 upto 25.5.2001 when the services were terminated and that the applicant was permitted to rejoin duty in terms of order dated 24.7.2002. It is also not disputed that persons who have been working as TGT like the applicant were regularised in service and the applicant lost an opportunity for regularisation as TGT because he was relieved from the post and was deputed to work against a post of Lecturer on working arrangement. Therefore, had the applicant continued as TGT, he would have at least got confirmation in the post of TGT. The applicant having been appointed against a leave vacancy, respondents cannot find fault with for terminating the services of the applicant, if the original incumbent of the post returns for duty. The counsel on either side agree that the OA can now be disposed of permitting the applicant to make a detailed representation to the 1st respondent explaining all the facts and circumstances and seeking appointment against the post of Lecturer or at least against the post of TGT and directing the respondents to consider the same in the light of the rules and instructions on the subject keeping in view the peculiar fact situation that for no fault of the applicant on account of the working arrangement made in the exigencies of service the applicant lost the chance of confirmation as a TGT and to give an appropriate reply and that so long as the post on which applicant is working is vacant, he shall not be relieved from the post.



5. In the light of the above submission made by the counsel on either side, the application is disposed of permitting the applicant to make a detailed representation to the 1st respondent explaining the facts and circumstances within a period of one month and directing the 1st respondent to consider the representation of the applicant taking into account the fact that the applicant had to loose his chance for confirmation in the post of TGT not for any reason attributable to him, but on the ground that it was due to the working arrangement by the respondents, in the light of rules and instructions and dispose of the same with due sympathy which the circumstances of the case warrant and to give him appropriate reply as expeditiously as possible. We also direct that till the post on which the applicant is working is filled with a regular incumbent, the applicant's services shall not be dispensed with. The above direction shall be complied with within a period of two months from the date of receipt of the representation. No costs.

Dated 20th February, 2003.



A.V. HARIDASAN  
VICE CHAIRMAN

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