

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

D.A.No. 1521/94, 1781/94, 157/95, 446/95

Tuesday, this the 12th day of September, 1995.

C O R A M

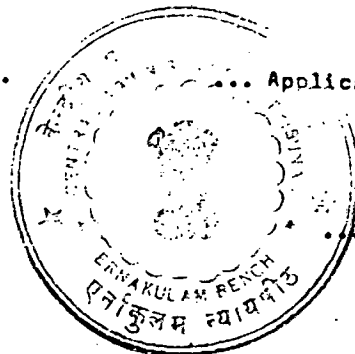
HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR.S.P.BISWAS, ADMINISTRATIVE MEMBER

D.A.No.1521/94

1. M.Mohammed Koya,
Maidan House, Chetlat Island,
Union Territory of Lakshadweep.
2. B.S.Chariya Koya,
Barali Surambi House,
Amini Island,
Union Territory of Lakshadweep.
3. C.M.Sayeed,
Chulath Madam House,
Amini Island,
Union Territory of Lakshadweep.
4. K.Kunhi, Keelacheri House,
Amini Island,
Union Territory of Lakshadweep.
5. P.K.Umaiban,
Puthikulap House,
Amini Island,
Union Territory of Lakshadweep.
6. B.Mohamed Basheer,
Barali House,
Amini Island,
Union Territory of Lakshadweep.
7. K.Siraj Koya,
Kunhacha House,
Amini Island,
Union Territory of Lakshadweep.
8. B.C.Sayedali,
Barali Chetta House,
Amini Island,
Union Territory of Lakshadweep.
9. P.P.Attakoya,
Pallipuram House,
Amini Island,
Union Territory of Lakshadweep.
10. K.C.Aboosalam,
Kappate Chetta House,
Amini Island,
Union Territory of Lakshadweep.
11. K.K.Yakhoob,
Kanjarakakada House,
Amini Island,
Union Territory of Lakshadweep.
12. P.Seedikoya,
Pakkimada House,
Amini Island,
Union Territory of Lakshadweep.

By Advocate Mr.Shafik MA

Vs.



Applicants.

1. Union of India represented by
the Administrator,
Union Territory of Lakshadweep,
Kavaratti,
2. The Collector - cum - Development Commissioner,
Union Territory of Lakshadweep,
Kavaratti.

... Respondents

By Advocate Mr.MVS Nampoothiri.

D.A.No. 1781/94

1. K.Naderkoya,
Kupath House, Agathi Island,
Union Territory of Lakshadweep.
2. P.Attakoya,
Pasthaniyoda House, Agathi Island,
Union Territory of Lakshadweep.
3. K.Sayed Mohammed Koya,
Kamalmaln-iyoda House, Agathi Island,
Union Territory of Lakshadweep.
4. K.Attakoya,
Kamalmalmiyoda House, Agathi Island,
Union Territory of Lakshadweep.
5. B.C.Jazeera,
Bender Cherriya Kapoada House, Agathi Island,
Union Territory of Lakshadweep.
6. K.M.Jameela,
Assistant Registrar of Co-operative Societies,
Kavaratti Island,
Union Territory of Lakshadweep.
7. K.M.Zaheeda,
C/o.C.Aboobacker,
Assistant Registrar of Co-operative Societies,
Kavarathi Island,
Union Territory of Lakshadweep.
8. V.Ummer, Clerk,
Co-operative Service & Marketing Society,
Kavaratti Island,
Union Territory of Lakshadweep.

... Applicants.

By Advocate Mr.Shafik MA

Vs.

1. Union of India represented by
the Administrator,
Union Territory of Lakshadweep
Kavaratti.
2. The Collector - cum - Development Commissioner
Union Territory of Lakshadweep,
Kavaratti,

... Respondents.

By Advocate Mr.MVS Nampoothiri

O.A. No.157/95

1. P.P.Hassan,
Puthiyaveedu, Androth Island,
Union Territory of Lakshadweep,
2. P.Jabbar Hasim, Poovada,
Androth Island,
Union Territory of Lakshadweep.
3. M.Musthak,
Medu Idiyakkal,
Ramudu Village, Minicoy Island,
Union Territory of Lakshadweep.

... Applicants.

By Advocate Mr.Shafik MA

Vs.

1. Union of India represented by
the Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. The Collector - cum - Development Commissioner,
Union Territory of Lakshadweep,
Kavaratti.

... Respondents.

By Advocate Mr.MVS Nampoothiri

O.A.No.446/95

1. K.I.Hakeem, Kakkayillam House,
Kalpeni Island,
Union Territory of Lakshadweep.
2. K.Nabeesath, Kunninamal house,
Kalpeni Island,
Union Territory of Lakshadweep.
3. K.P.Ali Akber, Kunhippubakkada House
Kalpeni Island,
Union Territory of Lakshadweep.
4. M.K. Abdullakoya, Malmikakkada House,
Kalpeni Island,
Union Territory of Lakshadweep.
5. P.Abdulsalam, Pokkilakam House,
Kalpeni Island,
Union Territory of Lakshadweep.
6. P.Abdul Hakeem, Mammel House,
Kalpeni Island,
Union Territory of Lakshadweep.
7. P.Akber, Pallath House,
Kalpeni Island,
Union Territory of Lakshadweep.
8. K.P.Humairth, Kodippally House,
Kalpeni Island,
Union Territory of Lakshadweep.
9. K.O.Akber, Kakkachiyoda House,
Kalpeni Island,
Union Territory of Lakshadweep.
10. M.C.Jaffar, Melachadam House,
Kalpeni Island,
Union Territory of Lakshadweep.



11. P.Hindbi, Pecheyath House,
Kalpeni Island,
Union Territory of Lakshadweep.
12. P.P.Musthaf, Pokkarappada House,
Kalpeni Island,
Union Territory of Lakshadweep.
13. K.K.Cheriyakoya, Kunnamkulam House,
Kalpeni Island,
Union Territory of Lakshadweep.
14. K.K.Mohammedkoya,
Kunnamkulam House,
Kalpeni Island,
Union Territory of Lakshadweep.
15. P.Hamzakoya, Pallath House,
Kalpeni Island,
Union Territory of Lakshadweep.
16. M.V.Mohammedkoya, Mathil Valiyamada,
Kalpeni Island,
Union Territory of Lakshadweep.
17. C.G.Anwar Hussain, Chemmengath House,
Kalpeni Island,
Union Territory of Lakshadweep.
18. C.G.Hyderali, Chemmengath House,
Kalpeni Island,
Union Territory of Lakshadweep.
19. C.N.Habsabi, Cheriyan Nallal House,
Kalpeni Island,
Union Territory of Lakshadweep.

... Applicants.

By Advocate Mr.Shafik MA

Vs.

1. Union of India represented by
The Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. The Collector - cum - Development Commissioner,
Union Territory of Lakshadweep,
Kavaratti.

... Respondents.

By Advocate Mr.MVS Nampoothiri

The application having been heard on 12th September, 1995,
the Tribunal on the same day delivered the following:



ORDER

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN:

Forty two applicants are before us (12 in O.A.1521/94, 8 in O.A.1781/94, 3 in O.A.157/95, 19 in O.A.446/95) seeking substantially the same relief, namely a declaration that the test proposed for selection to the post of Lower Division Clerk without exhausting the list prepared pursuant to the test in 1993, is illegal. Ancillary reliefs are also sought.

2. The pleadings are inadequate, if not unsatisfactory, for different reasons. Applicants would submit that they have no access to necessary material to make comprehensive pleadings, as the number of vacancies have not been notified. It is also said that this is the usual practice with the Lakshadweep Administration. Respondents have not taken the trouble of filing a detailed reply affidavit and for that reason, their pleadings are also unsatisfactory.

3. However, since a determination of the issues raised cannot be made in a state of factual vacuum, we called for the files and put ourselves to a fact finding exercise, which normally need not have been undertaken.

4. It is argued by applicants that there was no select list and that appointments have been made in an irregular manner. We called for the rank list and that was produced and it contains 164 names. Incidentally, applicants have produced a copy of the same list without authentication as A-1 in O.A.446/95. Besides the rank list, Standing Counsel for respondents produced a manuscript, of what is described as notification -F.No.12/13/94-Services signed by Secretary Administration bearing the date 9.3.94. It contains 39 names. We had also called for the communication to the Employment Exchange to ascertain the number of vacancies. The letters produced suggest that the notified vacancies were 39. There is something to indicate that more vacancies would arise. In fact more than 39 persons have been

appointed.

5. In the background of these facts (which we had to gather) we will examine the position in law and facts. It is well settled that inclusion in a select list will not confer on the person included in the list, the right to appointment unless the rules indicate the contrary, State of Bihar vs. Secretariat Assistants Successful Examinees Union, 1986 (AIR 1994 SC 736). In the case on hand, what is called a select list is not really a select list because N.P. Abdul Wahab, Ninempapada, Kalpeni, who is not in the select list has been appointed under A7. He figures only in the rank list. Therefore, we have to treat the rank list as the select list. This corresponds to A-1 list produced by respondents but without a caption.

6. If A-1 in O.A.446/95 is the select list, that select list will remain in force until it is cancelled or exhausted in the light of A5 Office Memorandum in O.A.1521/94. It reads:

" where selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment and the candidates awaiting appointment should be given appointments first."

The facts gathered are:

a) that only 39 vacancies were notified and there are indications that more vacancies were available. Appointment of N.P. Abdul Wahab (Annexure A7 marked by orders in M.A.935/95) confirms this. It was argued by respondents that Abdul Wahab and 2 others were appointed in the quota for the handicapped. May be. But every quota has to be against vacancies.

b) That A-1 ought to be treated as the select list as the respondents have gone outside what is produced



by them as the select list.

- c) That a reserve list of 10% , as required in A-5 in O.A.1521/94 has not been maintained.

Though there is no right in a person who figures in a select list to be appointed unless there is a provision to the contrary, as there is a provision to the contrary in A-5 (O.A.1521/94), those in the rank list are entitled to appointment according to their ranking, unless the list is cancelled.

7. We direct respondents:

- a) to treat A-1 in O.A.446/95 as the select list.
b) to make appointments from that select list in the order in which the candidates are ranked or till the list is cancelled.
c) not to make a fresh selection and make appointments unless A-1 in O.A.446/95 is exhausted or cancelled.

8. We further direct the Administration to publish the number of vacancies existing and anticipated in all cases in future so that rank arbitrariness or allegations of the rank are eliminated. We express our displeasure at the manner in which pleadings are drawn up and the manner in which two lists are maintained, calling one the select list and calling the other the rank list and making appointment from the rank list outside the select list, atonce arguing that an appointment cannot be made except from the select list. We allow the application to the extent hereinbefore mentioned. Parties will suffer their costs.

Dated the 12th September, 1995.

Sd/-
S.P.BISWAS
ADMINISTRATIVE MEMBER

Sd/-
CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN



CERTIFIED TRUE COPY

Date 15-9-95

Deputy Registrar