

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.179/05 & OA 528/05

Thursday this the 10th day of November, 2005

CORAM

HON'BLE MR. N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

OA 179/05

Najeeb C.O.
Chadachiyoda House,
Kalpeni, Lakshadweep. Applicant

(By Advocate Mr. N. Nagaresh)

.V.

1. Adminsitrator,
Union Territory of Lakshadweep,
Kavaratti, Lakshadweep.
2. Superintendent of Police,
Union Territory of Lakshadweep,
Kavaratti, Lakshadweep. Respondents

(By Advocate Mr. Shafik M.A.)

O.A.528/05:

- 1 Abdul Hassan S/o P.V.P.Attakoya,
aged 33 years, Mathil House,
Androth Island,
Lakshadweep.
- 2 Mohammed Yaseen T.P. S/o A.T.Mohammed Koya,
aged 22 years, Thithiyapada,
Kalpeni Island,
Lakshadweep.
- 3 A.Mohammed Razakudeen
S/o Kamjurudeen Sahib,

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Aged 22 years, Ashikada, Agatti Island,
Lakshadweep.

4 Shri T.I.Thajudeen S/o T.Ahammed
aged 24 years,
Mehera Manzil,
Kadamath Island, Lakshadweep.Applicant

(By Advocate Mr.P.R.Sreejith)

V.

1. Adminsitrator,
Union Territory of Lakshadweep,
Kavaratti, Lakshadweep.
2. Superintendent of Police,
Union Territory of Lakshadweep,
Kavaratti, Lakshadweep.Respondents

(By Advocate Mr. Shafik M.A)

These applications having been heard on 29.9.05 the Tribunal on
10 .11.2005 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

In O.A. 179/05 the Applicant filed the Application under
Section 19 of the Administrative Tribunals Act, 1985 seeking the
following reliefs:

- (i) to call for the records leading to Annexure.A1 order of
the 1st respondent and set aside the same to the extent
it applied to the applicant;
- (ii)to direct the respondents to appoint the applicant as
Police Constable in Lakshadweep Police Department
with effect from 24.9.2003, the date on which the 21
candidates from Annexure A4 list were given
appointment.

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(iii)To direct the respondents to give the applicant all consequential service benefits including due seniority and arrears of salary from 24.9.2003 till the date of his appointment.

Applicants in OA 538/05 have later filed a joint application seeking the same reliefs. As indicated later in this order, the Applicant in OA 179/05 and the third applicant, namely, Shri A.Mohammed Razakudeen in OA 528/05 had approached the Tribunal earlier which was disposed of vide order dated 8.2.03. Since the issues involved in both the O.As are same, both the O.As are disposed of by this common order.

2. For adjudication of the case, the following facts are relevant. The applicants are permanent residents of the Union Territory of Lakshadweep and they belong to the Scheduled Tribe Category. On 18.3.03, the Deputy Superintendent of Police published Annexure.A2 notification inviting applications from eligible candidates for the post of Police Constables for Lakshadweep Police Department. In the notification the number of posts to be filled up was not indicated. But in the Annexure.A3 requisition sent to the Employment Exchange it was stated that the number of posts is "approximately 21 (Twenty One)". The applicants applied for the post and qualified the test. The respondents published the names and roll numbers of 26 candidates recommended by the Recruitment Board, in the Lakshadweep Times dated 26.4.03 and the applicants' names

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appeared from at Sl.No.22 to 26 Vide Annexure.A5 letter dated 5.5.03 the applicants were also personally informed that their names were recommended by the Recruitment Board for employment as Constables in the Police Department of Lakshadweep Administration. They were also asked to submit the prescribed attestation forms after duly filled up within thirty days from the date of receipt of the letter and warned that in case they failed to do so in time, their candidatures for the above post will be treated as cancelled. All the 26 recommended candidates including the applicants have also been subjected to the codal formalities like medical examination etc., and the applicants were cleared for appointments. The respondents suddenly took the stand that only 21 vacancies were notified and the appointment will be confined only to that many vacancies out of the recommended list of 26 candidates. Aggrieved by the action of the respondents the applicant in OA 179/05 and another Applicant Shri A.Mohammed Razakudeen in OA 528/05 approached this Tribunal vide OA 812/03 and the same was disposed of by Annexure.A8 order dated 2.12.03 with the direction that the respondents shall consider appointment of the applicants against the vacancies of Police Constables existing or anticipated on the basis of their placement in the select list in the light of the extant rules and instructions. The relevant portion of the said order is necessary to be re-produced here which is as under:



"4. We have gone through the pleadings and the materials placed on record and have also heard the counsel for the parties for final disposal of the application. It is not disputed that the applicants successfully competed for selection and were placed at Sl.Nos.24 and 25 in the select list containing 26 names. It is also not in dispute that they were informed of the selections and had complied with the directions to re-submit the attestation forms of verification duly filled in and signed. The sole question is whether the applicants are entitled for a direction to the respondents to depute them for training along with the 21 persons already deputed and for a declaration that they are deemed to have been appointed to the category of Police Constables in Lakshadweep Police Department. While it is settled that a person placed in a select list has a right to be considered for appointment against the notified posts, it is also well settled that mere placement in the select list does not confer an indefensible right for appointment. In this case, the respondents have taken a definite stand that the requirement was only of 21 police constables, which is seen to be correct because in the notification issued by the employment exchange (Annexure.R1) the number of vacancies has been stated to be 21. The applicants therefore cannot say that they were selected against the declared vacancies. Therefore, they cannot claim parity with the first 21 who were selected against the declared vacancies namely 21. Therefore, they are not entitled for a declaration that they should be deemed to have been appointed or for a direction to the respondents to depute them for training along with the 21 persons who have been deputed.

5. In the conspectus of facts and circumstances, we find that the applicants are not entitled to the reliefs sought. While declining to grant the reliefs sought, we dispose of this application directing the respondents to consider the appointment of the applicants against the vacancies of police Constables existing or anticipated on the basis of their placement in the select list in the light of the extant rules and instructions. No costs."

3. Later on, according to the applicants, they came to know through the Annexure.A9 letter dated 19.2.04 that the screening committee constituted for the Annual Recruitment Plan for direct

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recruitment met on 13.3.03 and 4.8.03 cleared vacancies for the years 2003-04 and communicated to all the departmental heads vide administration letter dated 16.4.03 and 20.8.03. Vide Annexure A.9 letter, the respondents have modified the vacancies circulated earlier and revised the direct recruitment vacancies anticipated for the year 2003-04 for the post of Police Constables as 7. The applicants' case is that the respondents have suppressed this material fact of clearing the anticipated vacancies communicated to the department on 16.4.03 and 20.8.03 by the Recruitment Board in the reply statement filed in the earlier OA 812/03 which was disposed of on 2.12.03. The applicants in OA 179/05 when they came to know about the Annexure A9 letter dated 9.2.04 made the Annexure A12 representation dated 4.1.05 requesting the respondents to review the decision taken in Annexure A1 order dated 25.5.04 rejecting the claim of the applicants in OA 812/03 holding on to their earlier stand that all the 21 vacancies notified have been filled up and if there are vacancies which arose subsequent to the notification, they cannot be filled up from the list prepared for 21 vacancies.

4. During the pendency of these OAs the Applicants in OA 179/05 had filed MA 453/05 enclosing therewith a copy of the Notification No.1/9/2001-Estt. dated 1.5.2005 issued by the Superintendent of Police, Lakshadweep inviting applications for the post of Police Constables for the Lakshadweep Police Department.



In the M.A the Applicants have submitted that the respondents are going to fill up 40vacancies of the Police Constables and prayed that 5 vacancies should be reserved for the Applicants in the present O.As in the interest of justice. The Applicants in OA 179/05 had also filed MA No.875/05 annexing therewith a copy of the Minutes of the Meeting of the Screening committee which met on 13.3.2003 in the chamber of the Collector-cum-Development Commissioner and the Chairman of the Screening committee. After a detailed examination of the number of vacancies that were likely to arise in the Administration during the financial year 2003-04, the Committee cleared 49 anticipated direct recruitment vacancies out of the 61 vacancies which were likely to arise. Out of the49 vacancies thus cleared, 7 vacancies were in the post of Police Constables.

5. The contention of the Respondents was that the requests of the Applicants for appointment as Police Constable were rejected as only 21 vacancies were notified and the 5 vacancies which arose subsequent to the notification could not be filled up from the said list. However, they have admitted that the 7 vacancies of Police Constables in Annexure.A9 were the anticipated vacancies for the year 2003-04 but not notified by Annexure.A3 notification. The Respondents have further submitted that out of the 724 candidates, 599 appeared for the physical endurance test and out of 599 candidates, only 249 qualified for appearing in the written test. Only



244 appeared in the written test and 66 candidates were declared qualified for appearing in the interview. The Selection Committee finally recommended 26 candidates on merit against the 21 vacancies to safeguard against exigencies in the event of any candidate becoming unfit on medical examination and other process before appointment. The Respondents have also annexed a copy of the Minutes of the Selection Committee and the Merit List prepared by them. A perusal of the Minutes of the Selection Committee would reveal that the submission of the Respondents in the reply to the O.A is not borne out of the actual records. In fact the Selection Committee has prepared a Merit List of 51 persons. They have identified first 26 candidates in the Merit List who secured between 50.9 and 35.65 marks and recommended them for appointment as per the requirement of the Respondents. Nowhere in the minutes it has been stated that they were recommending 26 candidates as against the requisition for 21 candidates to safeguard against exigencies in the event of any candidate becoming unfit on medical examination and other process before appointment.

6. We have heard the learned counsel for the applicant and respondents. We have also called for the relevant record of the department and perused the same. It is revealed that the recruitment process for filling up of vacant posts of Constables in the Respondent Department commenced on 2.4.2002 with the

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forwarding of requisition letter to the District Employment Officer. The number of vacant posts notified was only 8 because out of the existing 17 vacant posts as on 4.2.2002, 9 vacancies arose before 2001 and they were attracted by the Ban Order of the Government of India contained in O.M.No.7(3)E-Coord/99 dated 5.8.99. By a subsequent communication dated 17.4.02 the Respondent Department notified 3 more vacancies increasing it by 11 posts. Recruitment to these 11 posts scheduled to be held on 5.6.2002 was postponed in view of the monsoon season and the consequent non-availability of suitable conveyance. Again the process was re-initiated in January, 2003 and it was assessed that 21 posts were lying vacant. The year-wise break-up of the vacancies is as under:

<u>Year</u>	<u>No. of vacant posts</u>
1995	2
1996	4
1997	2
1998	1
2001	9
2002	2
Jan.2003	1
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Total	21
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Of the above 2 posts, 9 posts arose in 1998 and earlier years have been attracted by the ban orders of the Government and only 12

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vacancies could be filled up. Besides there were 8 anticipated vacancies. Thus the approval of the Screening Committee to fill up 20 vacant posts was obtained. However, vide letter dated 28.1.2003, a requisition for "Approximately 21 (Twenty one) " posts was sent to the District Employment Officer. Later on the Chairman, Recruitment Board was requested to prepare a panel of 26 candidates from the native of the Islands, and a panel of 3 candidates from among the children of mainlander employers of Lakhadweep Administration. The available vacancies as on 15.4.2003 was indicated as 22. The recruitments were held from 16.4.2003 to 19.4.2003 and the Recruitment Board has forwarded a list of 26 candidates which could be considered for appointment against the 21 clear vacancies and 5 anticipated vacancies. These 5 anticipated vacancies were on account of posts fell vacant due to retirement of Sri K.Karunkaran Nair on 1.2.2003, retirement of Shri K.C.Balakrishnan Nair, Inspector on 1.5.03, Shri K.Narayanan, Inspector on 1.6.2003 and retirement of Shri A.P.Mohammed, S.I on 1.6.2003 and removal of Shri Joseph James on 7.4.2003. However, due to voluntary retirement of Shri K.C.Balakrishnan Nair, C.I on 30.4.2003 and sudden demise of a police constable Shri P.Ravindran, 2 more posts of police constable again fallen vacant which were not anticipated while calculating the vacancies as 26. 2 vacancies caused by the promotion of Head Constables Shri M.C.Hameed and Shri C.K.Sayed Mohammed to the

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post of ASI were also not indicated in calculating the vacancies as

26. When these 2 vacancies have also become available, with the approval of the Chairman, Selection Board, names of 3 more candidates as per the order of merit were identified. Out of these three candidates, 2 were to be considered for appointment against the by-now identified 28 vacancies and the third candidates was to be kept in the panel as a reserve candidate. This decision was taken on file on 13.8.2003. The Department had also initiated action to verify the character and antecedents of those 2 more candidates in addition to the Applicants, vide letter dated 25.8.2003 and they were also called for attending the medical test.

7. Thereafter, a representation from a private person was received in the Department on 3.9.03 requesting that the appointments should be restricted only for the 21 notified posts and the remaining vacancies should be notified and selection made separately. With this letter, all actions taken so far to fill up the remaining 5 vacancies for which the selection committee has already recommended and the additional 2 vacancies for which the approval of the Chairman of the Selection Board was obtained for filling up those posts as per the existing merit list were abandoned.

8. It is seen from the official records that in the year 2003, 16 vacancies have occurred in the following manner:

One Post of SI fell vacant on 1.2.2003 on retirement of Shri



K.Karnakaran Nair.

One Post of SI fell vacant due to removal of Shri Joseph James on 9.4.2003.

One post of SI fell vacant due to retirement of Shri A.P.Mohammed on 1.6.2003.

One post of Inspector fell vacant due to retirement of Shri K.C.Balakrishnan Nair on 1.5.2003.

One post of Inspector fell vacant due to retirement of Shri K.Narayanan on 1.6.2003.

Two posts of Head Constables fell vacant on account of promotion of Shri M.C.Hameed and Shri C.K.Syed Mohammed to the posts of ASI.

Seven posts fell vacant on promotion of S/Shri S. Badrudeen, K.P.Migdas, M.C.Mohammed, Alexander Joseph, K.Abdul Hameed, M.C.Hamza and A.V.Velayudhan in the month of July, 2003.

One post due to resigantion of Shri K.K.Hindubi in October, 2003.

One post due to retirement of Shri BC Aboosala in December, 2003.

9. At least 5 of the above vacancies arisen due to retirement were the anticipated vacancies and one post has fallen before the date of the test, due to the removal of one S.I. Therefore, there were 11 clear vacancies for the years 2001 and 2002 and 16 vacancies for the year 2003 including the two not-anticipated vacancies out of which one has occurred in 9.4.2003 and hence it was a clear vacancy as on the date of selection. That was why the respondents have taken the decision on file to fill up $28+1= 29$ vacancies from the merit list and

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approval of the Selection Committee was obtained.

10. It is essential that the number of vacancies for preparation of Merit List is to be estimated as accurately as possible and intimated to the prospective candidates and the Selection Committee, well in advance. For this purpose the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long leave, promotion and deputation or from creation of additional posts on a long term basis should be taken into account. In a selection, the actual number of regular vacancies that arose in each of the previous years and the actual number of vacancies proposed to be filled in the current year have to be determined. From the records it has been observed that the Respondents did not take adequate care in preparing the existing vacancies and the anticipated while sending the requisition to the Divisional Employment Officer on 28.1.2003. They indicated the vacancy position vaguely as "approximately 21 (twenty one) posts". The Respondents in fact calculated the actual number of vacancies as 12 and anticipated vacancies as 8 while reporting to the Divisional Employment Officer. The anticipated vacancies on account of retirements were not taken into consideration at all. If the Respondents would have calculated the vacancies properly in advance, they could have reported the actual vacancies as 8 and the anticipated vacancies as 12, thus the total of 26 vacancies. Later on, the Respondents have actually worked out



the correct number anticipated vacancies on file and got the approval of the Chairman, Selection Committee to fill up 28 posts. However, all the efforts to fill up these vacancies were abandoned on getting a letter from a private person as observed earlier when there was a direction from this Tribunal vide its earlier order dated 2.12.03 directing the Respondents to consider appointment of the Applicants in OA 812/03, against the vacancies of Police Constable existing or anticipated on the basis of their placement in the select list in the light of the extant rules and instructions. Even though the position of the anticipated vacancies for the year 2003 was available with the Respondents and the decision to fill up 28 vacancies was taken by the Respondents on file on 13.8.2003, they did not disclose those facts to this Tribunal in their reply in OA 812/03 as a result of which the issues raised in the said O.A could not be adjudicated conclusively and the Applicants were forced to approach this Tribunal again with the present Original Applications.

11. In the result, both the Original Applications are allowed. The impugned order of the Respondents dated 24.5.2004 is quashed and set aside. The Respondents are directed to appoint all the 5 Applicants in the two O.As as Police Constables in Lakshadweep Police Department in terms of the Annexure.A4 notification dated 26.4.2003. However, we are informed that the first 21 candidates of the Annexure.A4 list were already taken on the rolls of the

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Lakshadweep Police Department w.e.f. 24.9.2003 and they have been deputed to the basic training and the Respondents have again invited applications for the post of Police Constables for direct recruitment vide notification dated 1.5.2005. The Respondents are, therefore, directed to depute the Applicants in the present two O.As for basic training along with the next batch of candidates to be selected, for which the respondents have already initiated action vide their notification No.1/9/2001-Estt. Dated 1.5.2005. The Applicants will be further entitled for notional seniority along with the 21 candidates already taken on the rolls as per their respective position in the Merit List. The Respondents, within 4 weeks from the date of receipt of this order, shall issue necessary orders to the Applicants individually in terms of the above directions. In the facts and circumstances of the case, we also order that the Respondents shall pay cost of Rs. 3000/- per person to the Applicants within this period.

Dated this the 10th day of November, 2005



GEORGE PARACKEN
JUDICIAL MEMBER



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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