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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.179/2009

Monday this, the 26th day of October, 2009

CORAM:

HON'BLE DR.K.B.S.RAJAN, MEMBER(J)
HON'BLE SRI K.GEORGE JOSEPH, MEMBER(A)

V.P.Pradeep Kumar,
Vavolickal,
Champakara P.O.
Karukachal,
Kottayam.

... Applicant

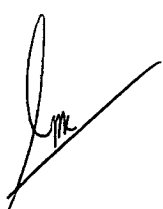
(By Advocate Sri Rinny Stephen)

vs.

1. Union of India,
Rep. by its Principal Secretary,
Ministry of Home Affairs,
Central Secretariat, New Delhi.
2. Administration of the Union Territory of Lakshadweep,
Rep by its Administrator(Secretary – Administration),
Secretariat,
Kavaratti 682 555.
3. Administrator (Secretary -Administration)
Administration of the Union Territory of Lakshadweep
Kavaratti.
4. Union Public Service Commission,
Rep. by its Chairman,
UPSC Headquarters
New Delhi.

... Respondents

(By Advocate : Mr.T.P.M. Ibrahim Khan, SCGSC (R-1)
Mr.S.Radhakrishnan (R2&3)
Mr.Thomas Mathew Nellimoottil (R-4

 The Application having been heard on 14.10.2009 ,the Tribunal on
delivered the following:-

ORDER

Hon'ble Sri K.George Joseph,Administrative Member:

This O.A. is filed praying for the following reliefs:-

- i)To declare that the applicant is entitled to be appointed as the Secretary to the Administrator, Lakshadweep Administration Office, Kochi on deputation on the basis of the selection made by the 4th respondent.
- ii)To direct respondent Nos. 2 and 3 to appoint the applicant as the Secretary to the Administrator , Lakshadweep Administration Office, Kochi on the basis of the selection and consequent recommendation made by the 4th respondent.
- iii)To pass an order restraining respondents 2 and 3 from making ad hoc appointment to the post of Secretary to the Administrator, Lakshadweep Administration Office, Kochi.
- iv)To pass such other orders which are deemed fit and expedient considering the nature and circumstances of this case.

2. The Union Territory of Lakshadweep Administration(UTL Administration – for short) had published Annexure A1 notification on 17.3.04 in the Employment News inviting application for filling up the post of Secretary to the Administrator in the Lakshadweep Administration Office, Kochi by transfer on deputation from among officers from the Central/State/Union Territory Administration. The applicant submitted Annexure A2 application to the second respondent. He was one of the 8 candidates shortlisted to be forwarded to the Union Public Service Commission for selection. The Selection Committee Meeting was held on 12.10.07.The selection of the applicant to the post of Secretary to the Administrator, Lakshadweep was communicated to the Secretary, Administration of Lakshadweep Secretariat vide Annexure R1 dated 16.10.07. In spite of repeated representations from the applicant, the UTL Administration did not appoint him to the said post and continued manning the said post on work arrangement basis. Hence this O.A.

3. The applicant submitted that the notified post to which he has been selected is a very sensitive post with high responsibilities and powers. Therefore the appointment is being made only for a period of two years on deputation basis from officers of Central and State Governments. The applicant's appointment is being delayed with mala fides to see that this post is manned by persons of the third respondent's choice.

4. The second respondent, namely, the Administration of Union Territory of Lakshadweep, accepted the fact that the UPSC had recommended the name of the applicant for appointment, but appointment was not given for the following reasons:-

(a) The UPSC conducted the selection without a representative of the department and solely based upon 'available documents'. Hence UTL has decided not to accept the Commission's advice and to refer the matter to ACC as per DoPT OM No. 39023/02/2006-ESH(B) dated 05.12.06 and the matter was communicated to UPSC.

(b) Sri Balakrishnan a regular Block Development Officer in the Administration was temporarily working against the post on work arrangement when the letter communicating the selection of the applicant was received by 2nd respondent.

(c) The said officer is also qualified and eligible to hold the post and very familiar with the activities and functions assigned to the post.


(d) The Appointing Authority is satisfied in the sincere and dedicated work of Sri Balakrishnan and whereas the applicant being an outsider of this Administration will not be able to discharge the duties and responsibilities assigned to such important post directly involving with the people of Lakshadweep.

By the time the communication recommending the case of the applicant was received by the UTL, Sri Balakrishnan, promoted as Deputy Collector, Headquarters at Kavaratti on ad hoc basis was temporarily appointed as Secretary to the Administrator on work arrangement with effect from 1.7.2007. It was admitted that the representation of the applicant dated 16.11.07(Annexure A9) and 25.3.08(Annexure A10) requesting for his appointment as Secretary to the Administrator were not processed because Sri Balakrishnan was discharging his duties efficiently and was due for retirement

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from service on 30.6.08 on superannuation. Meanwhile the Administration had taken up the matter with the UPSC for reviewing the selection with participation of a senior officer from the UTL Administration. It was further stated that the applicant was not appointed "because the appointing authority has to satisfy that the outsider is familiar with the situations prevailing in the island and is competent to deal with such matters". According to the second respondent, the post of Secretary to the Administrator is required to be filled up by a senior and qualified officer of UTL Administration for the smooth running of the administration ensuring that there would be no shortage of civil supplies items/medicines, diesel and other basic items needed by the islanders which are to be distributed through the fair price shops in the Co-operative Society under the Public Distribution System. It was also submitted that appointment on deputation is not a matter of right and cannot be enforced through a Court of Law. Even if a candidate is selected and included in the select list and even if there exists vacancies, there is no indefeasible and enforceable right for a candidate to get appointment.

5. On behalf of the 4th respondent, viz., the UPSC, it was submitted that 22 applications for appointment to the post of Secretary to the Administrator were received by the Department (namely UTL which shortlisted 8 persons as mentioned earlier), out of which 2 applicants were found eligible for consideration as per the provisions of the Recruitment Rules. The Selection Committee meeting was held on 12.10.07 and recommended the applicant, Sri V.P. Pradeep Kumar for appointment on deputation basis to the post of Secretary to the Administrator in UT of Lakshadweep Administration, Wellington Island, Kochi. It was further submitted that the Commission had duly taken into account the absence of the departmental representative and recommended the candidate on the basis of available documents. It was submitted that "The Department is required to implement the recommendation of the Commission as communicated to them vide letter dated 16.10.2007. It is further submitted that where the Appointing Authority proposes to disagree with the advice of UPSC for any valid reasons, the case has to be referred to the ACC along with a self contained note, through EO's office in the Department of Personnel and Training for decision. The Commission, therefore, reiterated the advice given vide letter dated 16.10.2007 to the Department on 25.05.2009 intimating that not



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accepting the recommendations of the Commission amounts to "Non acceptance of Commission's advice".

6. In the rejoinder the applicant submitted that before 12.10.07 the 4th respondent on two occasions fixed date for holding Selection Committee meeting, but the meeting was postponed on the request made by the UTL citing its inability to send a departmental representative on flimsy grounds. The second respondent, not having any valid reason for non-implementation of the recommendation of the UPSC, has not yet referred the case to ACC through the Department of Personnel & Training in spite of the purported disagreement with the recommendation of the UPSC.

7. It was submitted by the applicant that there is no requirement either in the Recruitment Rules or in the Annexure A1 notification that the candidate should be from the Union Territory of Lakshadweep. If the duties and responsibilities of the officer holding the notified post can be discharged by an officer of UTL, then the notified post would have been set apart as a promotion post for officers having prescribed educational qualification and experience of UTL Administration. The UTL Administration did not send its representative for the Selection Committee meeting deliberately and with mala fides as it found that the candidates for consideration by UPSC are not the ones the then Administrator of UTL intended to appoint to the notified post. Even if Sri Balakrishnan was posted to the notified post on work arrangement, once the recommendation is received for regular appointment he has no right to continue and he will have to give place to the candidate recommended by the UPSC for appointment to the notified post. The UPSC while recommending the applicant for appointment to the notified post had directed the UTL Administration to appoint the applicant after satisfying itself about his integrity. The UTL Administration has no contention with regard to the integrity of the applicant. Therefore it had no reason to delay the appointment of the applicant on account of its satisfaction on any other aspect.



8. Arguments were heard and documents perused.

9. The post of Secretary to the Administrator, UTL is a crucial post next in

importance only to the Administrator. This important post cannot be kept vacant. The Recruitment Rules for the said post are as under:-

"DEPUTATION

Officers under the Central/State Governments/Union Territory Administrations"

- a) (i) Holding analogous posts on regular basis in the parent cadre or department; or
- (ii) With 3 (three) years regular service in the grade rendered after appointment thereto on regular basis in the scale of Rs.5500-9000 (revised) or equivalent in the parent cadre/department; or
- (iii) With six years regular service in the grade rendered after appointment thereto on regular basis in the scale of Rs.5000-8000(revised); and
- b) Possessing the following educational qualification and experience:-
- (i) Bachelor's Degree from a recognized University or equivalent.
- (ii) Two years experience in administrative matters.

(The period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organization/department of the Central Govt. shall ordinarily not exceed 3 years. The maximum age limit for appointment by deputation shall be not exceeding fifty-six years as on the closing date of receipt of applications)."

The recruitment process was set in motion on 13.7.04 with the Annexure A1 notification. The Selection Committee meeting could be held only on 12.10.07 well after three and a half years of the initiation of the recruitment process. Although the name of the selected candidate for appointment was communicated as early as 16.10.07, the recruitment process is not yet completed by the UTL Administration. It would appear as if the UTL Administration lost interest in the person selected to be appointed as Secretary to the Administrator in accordance with the Recruitment Rules. In spite of the selected candidate knocking at its doors for appointment, the UTL Administration was not in a mood to appoint him nor did it give any valid reasons to him for the non-appointment. In the reply statement filed by the UTL Administration in this O.A., four reasons are cited which are taken up for consideration as under:

10. a) From the pleadings it is seen that three times date for the Selection Committee meeting has been fixed. On two occasions, the UPSC obliged by postponing the meeting, although the grounds submitted by the UTL Administration do not appear convincing. When the Commission proposed to hold the Selection Committee meeting for the first time all the senior officers available in the Administration were preoccupied in connection with the Planning Commission meeting at New Delhi, as per the version of the UTL. It is not stated that the date of the Selection Committee meeting clashed with the date of meeting with the Planning Commission. The second time the Administration was preoccupied with the visit of the Parliamentary Committee. Here also it is not seen that the date of the selection committee meeting clashed with that of the visit of the Parliamentary Committee. The officers are always preoccupied with one or other important or not so important matters of administration. But it is always possible to find time for the most urgent and important matter. If the post of Secretary to the Administrator is next in importance only to the Administrator, the filling up of that post with a suitable candidate is of some importance for which the Administration could have easily spared time. When the date was fixed for the third time, the UPSC had to do without the presence of a senior official from the UTL Administration, because the UTL Administration was obviously not finding it worth its while sparing an officer to attend it as it had, in its judgment, more important business to attend. This attitude on the part of the Administration gives credence to the charge that it was not interested in the person who was going to be selected as they were in the knew of the two shortlisted persons for selection. It was open to the UTL Administration to approach the UPSC with a set of dates on which it could have spared an official. If the UPSC conducted the selection without a representative of the Department, it is only the UTL Administration that is to be held responsible for the same.


b) The UPSC conducted the selection on the basis of available documents. To qualify its selection solely based upon the available documents is an attempt at obfuscation of the selection process without any basis. The UPSC had duly taken into account the absence of the departmental representative. If the UTL Administration cared, it could have sent its views in writing on the selection of a suitable candidate to the notified post to the UPSC in the context of its inability to spare an officer to attend the selection meeting. The UTL Administration does not

say which document was not available to the UPSC which invalidated its selection process. The word 'solely', is used to create an impression that the selection process made by the UPSC suffers from the lack of some vital input. The word 'solely' is used rather mischievously and meaninglessly.

c) All the members of the SCM were duly informed about the sitting of the Committee. The UTL Administration failed to remain present on its own accord. Absence of a member of SCM who is duly informed about the sitting of the SCM does not make the proceedings of SCM invalid.

d) The argument that, had a senior officer of the UTL Administration attended the SCM he could have prevailed on other members of the Committee to the satisfaction of the UTL Administration, to select a person of its choice for the notified post unmindful of the Recruitment Rules is taking too much for granted and is nothing short of belittling the highest Constitutional Body for selecting persons to man Government posts.

11. That Sri Balakrishnan was temporarily working against the post on work arrangement when the letter communicating the selection of the applicant was received, is not an argument that can justify not giving the appointment to the selected candidate. Temporary appointee has no right to continue in a post after the recommendation of the Commission is received for regular appointment. On receipt of the recommendation of the UPSC to appoint the applicant to the notified post for which the recruitment process was initiated by the UTL Administration itself, it is bound to remove Sri Balakrishnan and appoint the applicant to the notified post as recommended by the UPSC. The working arrangement is not in accordance with the Recruitment Rules for the notified post. It is only a temporary administrative arrangement awaiting the arrival of the regular appointee to the notified post. Once the regular appointee is selected, the Department is bound to give him appointment ending the temporary arrangement.




12. In the eyes of the UTL Administration Sri Balakrishnan also is qualified and eligible to hold the post and very familiar with the activities and functions assigned to the post. This is a fallacious argument. Sri Balakrishnan cannot be held to be

qualified and eligible to hold the post in accordance with the Recruitment Rules. If he was entitled to be appointed in accordance with the Recruitment Rules in the eyes of the Administration, there was no need to have initiated the recruitment process. There was no need of working arrangement. He could have been given regular appointment. What is required in terms of the Recruitment Rules is two years experience in administrative matters, not that he should be familiar with the activities and functions assigned to the post as presented by the Administration.

13. The satisfaction of the appointing authority in the sincere and dedicated work of Sri Balakrishnan does not entitle or make Sri Balakrishnan eligible for appointment to the notified post in accordance with the Recruitment Rules. The satisfaction of the Administration with Sri Balakrishnan can very well be expressed outside the sphere of the Recruitment Rules for the notified post. There is no provision in the Recruitment Rules for a special satisfaction of the UTL Administration in the sincere and dedicated work of the person to be appointed to the notified post which cannot stand scrutiny by the UPSC.

14. The conviction of the UTL Administration that the applicant being an outsider will not be able to discharge the duties and responsibilities assigned to such important post directly involving with the people of Lakshadweep is without any basis in the Recruitment Rules. It is quite surprising that such a reasoning is given by the UTL Administration which is headed by an outsider to the UTL Administration. This reasoning invites the charge of utter contempt for the Recruitment Rules framed for the purpose of filling up the post of Secretary to the Administrator.

15. The decision of the UTL not to accept the Commission's advice was communicated to the UPSC vide Annexure R2(a) dated 20.12.07. That it took more than two months to convey the decision of the UTL Administration not to accept the Commission's advice shows that the Administration was taking the issue of filling up of the important post of Secretary to the Administrator in a lackadaisical manner because it had very satisfactory working arrangement.



16. In the reply statement filed by the UTL it is stated that "The applicant though worked as Radio Sound Observatory, Minicoy for 3 years and Officer In-charge

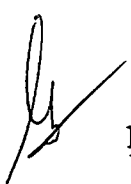
of Metrology Unit of Agatti Airport, these are not adequate proof that he is experienced in Administrative line and his experience does not appear to fulfill the charter of duties and responsibilities attached to the said post for which justification could not be provided to Commission, without non-participation of Senior Officer from U.T.L. Administration". It is not open to the UTL Administration to state that the applicant does not have adequate experience in the administrative line and that his experience does not appear to fulfill the charter of duties and responsibilities of the notified post after having found him eligible in accordance with the Recruitment Rules and shortlisted him as one of the 8 candidates found eligible for consideration by the UPSC. Even if the UTL Administration had a second thought it could have as well conveyed its views to the UPSC in writing in the context of its non-participation in the Selection Committee meeting. The UTL has very close and intimate connections with Kerala. Any Keralite with some exposure in administration in whatever capacity like the applicant should not be treated as an outsider to the UTL Administration. If this position is not acceptable, the UTL Administration is well within its rights to amend the Recruitment Rules to make the post of Secretary to the UTL Administrator a promotional post for the UTL officers, if legally possible. But till then, it has to respect the existing Recruitment Rules.

17. In the communication dated October 16, 2007, the UPSC had stated:-

"2. The officer recommended for appointment on deputation basis may be appointed after the appointing authority have satisfied itself about his integrity."

The UTL Administration in its reply states as under:-

"The 2nd respondent has no doubt about the integrity of the applicant because the Constitutional Institution likes UPSC after evaluation of his ACRs and Integrity, made recommendation. In such cases the question of Integrity of the applicant does not arise". If the UTL Administration is satisfied with the integrity of the applicant, there is no other satisfaction it can seek within the ambit of the Recruitment Rules.



18. It is also stated that the second respondent is not against the implementation of the recommendation of the UPSC subject to satisfaction. If the UTL


Administration wants any satisfaction other than integrity of the applicant about which it has no doubt, then it is not in accordance with the Recruitment Rules and the said satisfaction is kept as vague as possible. In Annexure A/16, the applicant had raised the question :

“2. Define the term SATISFACTION within the ambit of the Recruitment Rules to the post of Secretary to the Administrator, as the posting is to be made at the interest of public service?

Not relevant.”

The answer given by the UTL Administration is 'Not relevant'. More than the fact that the answer 'Not relevant' can be challenged in appeal under the RIL Act, it highlights the vagueness and irrelevancy of the satisfaction of the UTL Administration that the applicant has to fulfill.

19. It is stated that the second respondent was not aware of the procedure to be followed when disagreeing with the advice of the Commission till the letter dated 25th May, 2009 was received from the Commission. Lack of awareness on the part of the UTL Administration about the procedure to be followed in the wake of disagreement with the recommendation of the UPSC cannot save it from the consequences of not following the advice of the UPSC. It is stated that the procedure as per the guidelines of the Government of India dated 5th December, 2006 (Annexure A/18) is not followed till date as the matter has been sub judice. The relevant extract from the guide lines is quoted below:-



“Where the Appointing Authority proposes to disagree with the advance of UPSC for any valid reason, case(s) should be referred to the ACC, alongwith a self contained note, through EO's office in Department of Personnel and Training, for decision. In respect of cases covered under (a) and (b), where the final decision by the ACC involves disagreement with the advice of UPSC, reasons for non-acceptance of the Commission's advice will also be intimated by the Ministry/Department/concerned division of Department of Personnel and Training to the UPSC while communicating the decision of the ACC, unless it

has been decided to withhold the reasons for disagreement in public interest.”

This O.A. is filed on 18.3.09. If the UTL Administration had a disagreement with the advice rendered by the UPSC it could have sought advice from the concerned Department of the Government of India. The real reason for not doing so, in our opinion, is that the UTL Administration had no valid reason to disagree with the advice of the UPSC to refer it to the ACC, keeping in mind the provisions of the Recruitment Rules for the notified post and Article 16 of the Constitution of India.

20. The UTL Administration argues that appointment on deputation is not a matter of right even if a candidate is selected and included in the select list and even if there exists vacancies it is well established and there is no indefeasible and enforceable right for a candidate to get appointment. The Apex Court in *Shankarsan Dash v. Union of India*; 1991(3)SCC 47, held:-

“...if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.”

(emphasis supplied)

A successful candidate does not acquire an indefeasible right to be appointed against a vacancy but as made clear in the decision of the Hon'ble Supreme Court it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons and if any vacancy is to be filled up the State is bound to respect the selection of the candidate and no discrimination can be permitted.

21. The UTL Administration does not have good reasons be it administrative,


economical or policy, not to fill up the post of Secretary to the Administrator. It cannot arbitrarily delay the appointment of a candidate duly selected in accordance with the Recruitment Rules on account of its satisfaction with the working arrangement to man the notified post.

22. In (1999)6 SCC 49, it was held that the right of appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant but on the erroneous decision of the employer himself.

23. In R.S.Mittal vs. Union of India; 1995 Supp (2) SCC 230, the Apex Court held:-

"It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."(emphasis supplied)

24. In Asha Paul (Mrs) and Another vs. State of Jammu and Kashmir and others; (1993) 2 SCC 573, the Apex Court observed as follows:-



"8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (State of Haryana v. Subhash Chander Marwaha; (1944) 3 SCC 220; Mani Subrat Jain vs. State of Haryana; (1977) 1 SCC 486; State of Kerala v. A. Lakshmikutty; (1986) 4 SCC 632) but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be

reduced to a farce. Having sent a requisition/ request to the Commission to select a particular number of candidates for a particular category,- in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the government – the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in *Shankarsan Dash v. Union of India*, (1991) 3 SCC 47, where the earlier decisions of this Court are also noted. (emphasis supplied)

As per the above decisions of the Apex Court, the legal position is quite clear that a duly selected candidate cannot be denied appointment arbitrarily.

25. Annexure A/17 report pertains to a corruption case registered by the CBI against the officer on working arrangement in the notified post and others in the purchase of petroleum products from Kerala which are meant to be distributed in Lakshadweep Island. There is tax exemption for goods being purchased for Lakshadweep Administration. Forged documents are created to show that these goods are transported to Lakshadweep by ship, but as reported they are sold in Kerala illegally enriching officers in the UTL Administration and others. The fact of the CBI enquiry into this alleged corruption case is not contested by the UTL Administration. If found correct, this report will not show the UTL Administration and the working arrangement in the notified post in a good light.

26. In the conspectus of facts and circumstances of this case and in view of the settled legal position, we are of the view that the UTL Administration has no right to continue with the working arrangement in the notified post depriving the applicant who is duly selected for appointment to that post in accordance with the Recruitment Rules. Had the applicant been appointed upon his selection he would have completed his tenure of deputation of two years by now. Therefore, any further delay in appointing the applicant to the notified post should be strictly avoided in the interest of justice.

27. Accordingly, the O.A. is allowed. Respondent Nos. 2 and 3 are directed to

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appoint the applicant as Secretary to the Administrator, Lakshadweep Administration Office, Kochi on deputation on the basis of the selection made by the UPSC ending the ad hoc appointment to the said post within a period of 15 days from the date of receipt of a copy of this order. No order as to costs.



(K. George Joseph)
Member(A)



(Dr. K. B. S. Rajan)
Membr(J)

/njj/