

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 184 OF 2011

Monday, this the 24th day of September, 2012

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Zabeer T.P
Thekkilappura House
Agatti Island – 682 553

... Applicant

(By Advocate Mr. K.B.Gangesh)

versus

1. The Administrator
Administration of the Union Territory of Lakshadweep
Kavaratti – 682 555
 2. The Superintendent of Police
Union Territory of Lakshadweep
Kavaratti – 682 555
 3. The Secretary (Home)
Department of Police
Administration of the Union Territory of Lakshadweep
Kavaratti – 682 555
- ... Respondents

(By Advocate Mr. S.Radhakrishnan)

The application having been heard on 24.09.2012, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The challenge made in the OA is against Annexure A-9 circular inviting application for filling up of various posts under Coastal Security in Lakshadweep Police Department through deputation and reemployment. The posts were notified as per Annexure A-3 Recruitment Rules. As per Annexure A-3, 50-% of the posts are to be filled up by direct recruitment and the balance 50% by promotion. If no candidates are available for promotion then those posts are to be filled up by



deputation / transfer failing which by direct recruitment. For the posts of Master and Engine Driver in various cadres notified under the scheme a competency certificate under the Inland Vessel Act, Merchant Shipping Act or Harbour Craft Rules in the concerned field is prescribed as the technical qualifications. It is contended that Annexure A-9 notification is contrary to Annexure A-3 Rules. Applications have been invited for three posts of Assistant Sub Inspector (Master), two posts of Assistant Sub Inspector (Engine Driver), eight posts of Head Constable (Master), seven posts of Head Constable (Engine Driver), two posts each of Head Constable (Seacunny) and Head Constable (Greaser). Annexure A-9 provides for reemployment as a mode of appointment which is not prescribed in Annexure A-3. Annexure A-9 is bad for the reason that it provides for appointment of technically unqualified hands through re employment provides they acquire the competency certificate within a period of three years of appointment. The term of appointment in Annexure A-9 is only for one year. It is their contention that Recruitment Rules published for the above posts appointment through re employment is not prescribed as a mode of appointment. The attempt is to prevent Islanders from getting appointment to the above posts. The applicant is a native of Agatti Island. He belongs to Scheduled Tribe. He is a matriculate with a technical qualification of engine Driver obtained from the Central Institute of Fisheries Nautical and Engineering Training. Annexure A-1 is the SSLC certificate of the applicant. Engine Driver Course certificate issued by the CIFNET is produced as Annexure A-2. It is their case that Inland Vessel Act 1917 is not made applicable to the Lakshadweep Islands. Even though the Lakshadweep Harbour Craft and Fishing Boat Rules, 1991 have been formulated and notified, no competency certificate has ever been issued by the Port Department to anybody. As far as a competency certificate under the Merchant Shipping Act is concerned, the same is meant for foreign going and cargo ships and are not attainable with the experience in the vessels in Lakshadweep Islands. In the circumstances, qualified and experienced hands in the Islands like the



applicant do not have the relevant competency certificate prescribed in Annexure A-3. In fact the prescribed qualification for Engine Driver under the Fisheries Department of the Administration is only a qualification from the CIFNET. Annexure A-4 is the copy of the notification relating to the post of Engine Driver in Fisheries Department dated 01.02.2011. In short, it is the case of the applicants that they could not apply for want of relevant competency certificate. 24 posts were notified as per Annexure A-5. The respondents could get only three technically unqualified mainlanders for appointment through re employment.

2. It is urged that in Annexure A-3 rules, the mode of appointment for Head Constable (Seacunny) are direct recruitment and promotion. Annexure A-3 does not envisage re employment as a mode of appointment. Three vacancies are already filled up by re employment as evidenced from Annexures A-6 & 7.

3. In the reply statement filed by the Respondents it is stated that Annexure A-3 is relevant Recruitment Rules to Group C posts under the Coastal Security Scheme of Lakshadweep Police Department. The cadre strength of the Group C post is 140. A total of 120 vacancies were filled up as the Recruitment Rules from local candidates. Out of 22 technical posts, two HC(Seacunny), two HC(Greaser), 16 Constable (Lascar), one Inspector (Communication) and one SI (Wireless) have been filled up locally. Later on, Annexure A-9 circular has been issued as no technically qualified candidates were locally available. As a matter of fact all the vacancies were notified initially by notification dated 01.01.2009. Annexure A-9 is stated to be conformity with the relevant Recruitment Rules which provides for filling up the vacancies in the event when sufficient candidates are not available for direct recruitment / promotion. Government of India had sanctioned two 12 tones and four 5 tones Interceptor boats in the first phase 2005 to 2011 March and the boats were ready for delivery at Goa Ship Yard. The Interceptor boats have to be put in the operation immediately in view of the



security situation. Six Interceptor boats have been collected from Goa Ship Yard. Governemtn of India had also sanctioned another six Nos. of 12 tones Interceptor boats in the second phase commencing with effect from April, 2011. Formal sanction of manpower in second phase is still awaited. Three Interceptor boats i.e one 12 T and two 5 T are being transported from Beypore shortly. Since the retired Coast Guard / Navy personnel have adequate experience and exposure in handling such boats during their service period it was suggested by the Ministry to engage them for such responsibilities on contract basis. As per Recruitment Rules, the vacancies mentioned in para 4 have been filled up rank wise from local candidates only. The applicant is not entitled to be considered against the technical post in view of the provisions in the relevant Recruitment Rules which have been duly notified. It is their case that respondents had resorted to re employment method as no qualified hands were available as per relevant Recruitment Rules for deputation as well as for Direct recruitment locally. The non availability of qualified local candidates was raised in the MHA meeting and it has been decided by MHA to recruit Ex Coast Guard / Navy personnel on contract basis. It is contended that Annexure A-5 circular for appointment by re employment was issued in consultation with the competent authority at the review meeting held on 07.12.2009.

4. We have heard the counsel on both sides. At the time of admission, the interim order was declined by this Tribunal. The same was challenged before the Hon'ble High Court of Kerala in O.P(CAT) No.1122/11. The judgment was rendered on 12.04.2011. The Hon'ble High Court originally granted stay of further proceedings pursuant to Annexure A-9. At the time of passing the final judgment, modified the interim order. As per para 9 of the order, the Hon'ble High Court directed the Administration to appoint necessary personnel for the time being in terms of Annexure A-9 circular. But, these appointments shall be provisional and for an outer limit



of one year or for such tenure as may be decided by the Tribunal. The applicant shall implead the Director of Ports and such other authorities necessary for a proper adjudication of the case. There is a further direction to the Administration that appropriate orders be issued to the authorities concerned to ensure that competency certificates are granted to the Islanders, who qualify in the tests under the Lakshadweep Harbour Craft and Fishing Boats Rules, 1991 to be held without any further delay.

5. Subsequently, the Administration have made provisional appointments of candidates for a period of one year. In the light of the reply statement filed it is categorically clear that re employment is not a mode of appointment as prescribed in the Recruitment Rules, Annexure A-3. Though they resorted to reemployment on an earlier occasion advertisement were issued and sufficient candidates were not obtained for appointment. It is contended that the method of re deployment was resorted to after obtaining approval from the government. The fact that qualifications have been prescribed by a statutory rules and if any appointments is to be made by a different method, the authority should resort to necessary amendment to the Recruitment Rules in accordance with law and make appointments accordingly. So long as Recruitment Rules are not amended appointment by redeployment de hors the rules cannot be made. We declare so. As regards the examination to grant competency certificate to the Islanders are concerned, the applicants have not impleaded the Director of Ports concerned. We direct the Administration to conduct the examination as early as possible and issue certificate to the successful candidates. It is pointed out that nobody has made any application and as such they could not conduct the examination. It is only appropriate that in case applications



are made within one month from today, Administration shall make necessary arrangements for conducting the examination so that Islanders can also participate in the selection after the expiry of one year when new notifications is issued. The provisional appointees cannot continue for more than the period they have been appointed as of now. Fresh recruitment will have to be resorted to.

6. OA is **disposed of** as above. No costs.

Dated, the 24th September, 2012.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

VS