

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 191/2005

TUESDAY THIS THE 10th DAY OF OCTOBER, 2006.

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Seyed Mohammad Khaleel
S/o late Sayed Mohammed Jamaludheen
Shaikkent Veetil Padippura
U. T. of Lakshadweep,
Androth,

Applicant

By Advocate Mr. P.V. Mohanan

Vs.

- 1 The Administrator
 U.T. Of Lakshadweep
 Kavaratti.
- 2 The Director of Education
 U.T. Of Lakshadweep
 Kavaratti.

Respondents

By Advocate Mr. Shafik M.A.

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This O.A. has been filed seeking to direct the respondents to appoint the applicant to the post of Trained Graduate Teacher (Mathematics) from Annexure A-1 Select List and for other consequential benefits.

- 2 The applicant has stated the facts thus:- A notification was issued by the second respondent in January, 2003 for recruitment of 3

regular vacancies of Trained Graduate Teacher (Mathematics) and one anticipated vacancy of TGT(Mathematics). The applicant having worked as a TGT (Mathematics) in different schools under the second respondent from 2001 onwards on ad hoc basis applied for the post and was selected and included at rank NO. 1 in the list at Annexure A-1 against the anticipated vacancy. Three candidates included in the Select List against the regular vacancies were already appointed in the year 2003 itself. The anticipated vacancy against which the applicant ought to have been appointed remained unfilled. However, by notification dated 25.11.2003, two vacancies of TGT (Mathematics) were again notified to be filled up, but the above notification was later cancelled. The respondents again issued a notification dated 10.2.2005 (A2) for conducting written test and interview without stating the number of vacancies. It is the case of the applicant that this notification includes the anticipated vacancy which remained unfilled. The applicant had been seeking appointment thereafter by submitting representations at Annexure A-3, A-3(a) without any response. He has submitted that persons included in the Select List against anticipated vacancies of different disciplines have already been appointed and only in the case of TGT (Mathematics) a different yardstick has been adopted. Similarly placed persons included in the Select List in other disciplines had filed O.A. 1030/2003 and obtained favourable orders from this Tribunal (Annexure A-5). The legal ground taken by the applicant is that the vacancy notified must be filled from the Select List whether it is a regular or anticipated vacancy and the respondents

should not have notified the anticipated vacancies during the currency of the Select List and that the right to be considered for appointment is a Fundamental Right under Article 16(1) of the Constitution of India as interpreted by the Apex Court in Ajith Singh's case (AIR 1999 SC 3471)

3 The applicant has sought the following reliefs:

(i) To direct the respondents to appoint the applicant to the post of Trained Graduate Teacher (Mathematics) from Annexure A-1 Select List with all consequential benefits including pay and allowances.

(ii) To declare that the applicant is deemed to have been appointed against anticipated vacancy of Trained Graduate Teacher (Mathematics) with effect from the date of publication of Annexure A-1 list.

(iii) To direct the respondents not to fill up the vacancies of Trained Graduate Teacher (Mathematics) otherwise than by appointing the applicant from Annexure A-1 select list.

(iv) To direct the respondents to keep one vacancy of Trained Graduate Teacher (Mathematics) unfilled till the final disposal of the Original Application.

(v) Any other appropriate order or direction this Hon'ble Tribunal deem fit in the interest of justice.

4 The respondents have filed a reply statement submitting that the O.A. is not maintainable either in law or on facts and circumstances of the case. Consequent to the approval accorded by the Government of India for creation of 103 posts of Teachers in the Lakshadweep Administration, 26 posts were identified for TGTs, out of which only three posts were earmarked for TGT(Maths.) to be recruited by direct recruitment. One more vacancy was anticipated on account of promotion of one TGT to PGT. Thus three clear vacancies and one anticipated vacancy were notified. The applicant was one of the

candidates who applied for the post and was selected against the anticipated vacancy. But the anticipated post had not arisen because promotion from the post of TGT to PGT had not materialised due to non-finalisation of the seniority list which was under process for quite some time. The Administrator had notified two posts of TGT on 10.2.2005 but these posts had arisen by conversion of two promotion posts from PST to TGT by the order of the Administrator due to non-availability of eligible PSTs for promotions to the post of TGT. These two posts were under direct recruitment quota and did not come under anticipated vacancy notified earlier. The respondents have stated that the applicant cannot be appointed against vacancies which are now notified, and the applicant has appeared in the selection and has not come out successful and after having undergone the selection process he cannot challenge the same selection and ^{that} he has concealed this fact in the O.A. The decision cited by the applicant in O.A. 1030/03 is entirely different and cannot be applied in the case of the applicant. The applicant in O.A. 1030/03 was actually a wait-listed candidate who was elevated to the position for the anticipated vacancy and the Tribunal was pleased to order that since she was a wait-listed candidate she need not wait for the vacancy anticipated to arise and if any new vacancy arises within a period of the normal one year life of the panel, the applicant therein was eligible for the same. In the case on hand the applicant is not a wait-listed candidate and there is no similarity between the two cases.

5 The applicant has filed a rejoinder claiming that by proceedings dated 25.6.2005 two TGTs (Mathematics) were promoted as Assistant Educational Officer and Assistant Head Master respectively and thus two vacancies consequent to the promotion have arisen and the applicant was entitled to get one of the vacancies. The applicant has also filed an M.A. producing certain documents at Annexure A-15 to A-20. In the light of these documents this Tribunal sought certain clarifications from the respondents with regard to the conduct of the selection process. The respondents thereafter filed additional reply statement clarifying the above doubts and queries, the gist of the submissions being that the first notification Annexure R-3(b) was in March, 2003, the second notification Annexure R-3(c) dated 2.4.2003 was issued on the basis of ^{the} calculation that vacancies may arise due to promotion of PGT to AEO/AHM etc. The select list was published in June, 2003. The next notification Annexure R-3(d) dated 25.11.2003 had to be cancelled as the period of notification exceeded 6 months without recruitment. Hence the department re-notified the same vacancies in Annexure R-3(e) dated 13.9.04. There is no basis for assuming that the 2 vacancies ^{thus} notified include the anticipated vacancy. The notification at Annexure R-3(g) dated 10.2.2005 for the written test etc. was responded to by the applicant but he did not get selected.

6 A counsel's statement was also filed further clarifying the sequence of the arising of vacancies. It is also pointed out that the applicant approached this Tribunal on the date the Select Committee met for finalisation of the panel and the Tribunal by an interim direction

had ordered that one vacancy shall be kept vacant. Thus the selection Committee selected only one candidate against the two vacancies and kept the next selected candidate in the wait-list with a mention in the selection proceedings that the wait listed candidate shall be considered for appointment against the second vacancy subject to the outcome of this O.A. This wait-listed candidate has also filed an M.A. for impleading himself in the O.A. claiming that he is entitled for the appointment to the second vacancy. These selection proceedings were conducted against the notification dated 13.9.2004.

7 We have heard the learned counsel on both sides. The learned counsel for the applicant has argued that since all the persons in the Select list of 2.6.2003 against the regular vacancies had already been appointed, the applicant who was listed against the anticipated vacancy should have been appointed in the next vacancy as soon as it arose and such availability of two posts is very much evident from the fact that the Department had issued another notification dated 25.11.2003 (though it was subsequently cancelled) and the respondents' contention now that the cancelled notification was re-notified in 2004 and selection conducted in 2005 will prove that the entire selection process was against the same vacancy for which he was selected. The learned counsel for the applicant relied on the judgment in Oriental Insurance Co. Ltd. Vs. T.S. Sastry (2004) 1 SCC 136 and the judgment of this Tribunal in O.A. 1045/96 ^{and OA 1030/2003 were} also cited by the learned counsel for the applicant in support of his contentions.

8 The learned counsel for the respondents has strongly refuted these arguments and pointed out that the vacancy which was anticipated in 2003 has arisen only in 2006 and so far the department has not initiated any action to fill up those vacancies. Thus the selection process which commenced in 2004 related to two different vacancies which has no nexus to the earlier selection in which the applicant was selected. The applicant himself has taken part in the subsequent selection and failed to come out successful and therefore he cannot now challenge the entire selection process which had been notified for different vacancies and the rights of these persons who have been selected by due process cannot be forfeited by such contentions raised by the applicant. The Apex Court in several judgments has reiterated such a stand.

9 The factual details of the applicant's selection against the anticipated vacancy arising out of the notification dated 2.4.2003 and the publication of the select list on 2.6.2003 in which he had been included are admitted in the reply statement. The two pillars on which the applicant rests his case are (i) that he was specifically selected against an anticipated vacancy of TGT (Maths.) which was expected to arise as per the notification dated 2.4.2003 and that such a vacancy had indeed arisen which fact is confirmed by the notification of the respondents themselves dated 25.11.2003 and (ii) he should have been appointed against that vacancy as the select list was still valid and a selected candidate has a vested right to be appointed to the post. With regard to the first point the contention of the respondents is that

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the vacancy was anticipated to arise due to the promotion of one TGT (Maths) to the next higher grade on promotion namely PGT/AHM/HM/AEO. However, due to the non-finalisation of the seniority of TGTs the promotion of the TGTs to the next higher cadre as expected failed to take place resulting in non-arising of the anticipated vacancy that was notified earlier. The seniority list of TGTs was finalised only in the year 2005 as per order dated 13.6.2005 and as per the order dated 16.6.2005 two TGT (Mathematics) were promoted. Hence these two vacancies as anticipated in 2003 have arisen only on 16.6.2005 by virtue of promotion of TGTs to PGT(Mathematics) and have not yet been filled up. As regards the factual situation regarding the anticipated vacancy in 2003 against which the applicant was selected, the contention of the applicant is that two other vacancies had arisen when the first respondent by order dated 21.7.2003 converted 10 posts of TGT in different subjects including two posts of TGT(Mathematics) from the promotion quota to the direct recruitment quota due to non-availability of qualified PST for promotion to the post of TGT as per the Recruitment Rules and so they should be taken as anticipated vacancies. These two vacancies were notified by the department on 25.11.2003 but the notification was cancelled due to non-completion of the selection proceeding within six months from the date of the notification. The Department thus re-notified the very same vacancies as per notification dated 13.9.2004 to which a corrigendum was issued in R-2((f) increasing the number of vacancies to two. These facts have now come out as per the additional reply statement filed by

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the respondents and it is also now confirmed from the pleadings that the notification dated 13.9.2004 pertains to the very same vacancies which were notified on 25.11.2003 and subsequently came to be cancelled. It is also now confirmed from the pleadings that Annexure A-2 is only a call letter informing the schedule for the written test/interview pertaining to the notification dated 13.9.2004 and that the selection proceedings i.e. the written test and interview in pursuance of the notification dated 13.9.2004 commenced on 21.2.2005 and concluded in the selection of one candidate against the two notified vacancies and that the second candidate who was waitlisted has not been appointed due to the interim direction of this Tribunal to the effect that one vacancy should be kept vacant. In other words, this would mean that the selection which has now been made pertains to the two posts which were converted from the promotion quota to that of direct recruitment quota by the Administrative order dated 21.7.2003 and the selection for which was to be held in November, 2003 but had subsequently been cancelled.

10 The question that arises for consideration therefore is whether these two vacancies can be counted against the anticipated vacancy covered by notification dated 2.4.2003 and if so what is the right of the applicant to be considered against these vacancies. When the respondents notified the anticipated vacancy, the anticipation was based on the promotion expected to take place from the cadre of TGT to PGT and equivalent posts of AHM/HM etc. We can see that these promotions could take place only in 2005. But two vacancies did arise

because of a decision of the Administration to convert two posts of PST to TGT from the promotion quota and shifting them to Direct Recruitment quota. This process cannot be said to have been anticipated earlier when the April, 2003 notification was issued. Clearly, these two vacancies were unrelated to the vacancies against which the applicant was selected.

11 According to the guidelines regarding preparation of select list the select list would be prepared limited to the number of vacancies including anticipated vacancies due to retirement, etc. Later by a circular dated 26.11.1990 it has been reiterated that select list of candidates should be prepared to the extent of the number of vacancies notified and the vacancies must be filled according to the rank in the select list. Here three regular vacancies and one anticipated vacancy were notified. The applicant who obtained the 4th rank was shown in the list against the anticipated vacancy. Hence by virtue of the instructions mentioned above the select list was notified only to the extent of the number of vacancies covered in the notification. Any number of vacancies arising thereafter cannot be taken in to consideration for preparation of select list. Strictly speaking the applicant cannot lay a claim for the vacancies which arose in a different context after the selections pertaining to the March 2003 notification were over.

12 Since the applicant was shown against an anticipated vacancy and included in the Select List, he would be eligible to be appointed within a period of one year of validity of the select list only. Since the

applicant had been waiting, the respondents could have perhaps considered the appointment of the applicant against one of the vacancies ~~is~~ which came up in November purely as a matter of discretion. But they had not filled up these posts and initiated the selection process only on 1.9.2004 by which time, the validity of the select list also expired. It is purely the discretion of the authorities whether to fill up the said two vacancies which were created subsequently and they cannot be compelled to do the same if they had chosen to keep the posts vacant. The applicant would not have any right by virtue of his inclusion in the select list against another anticipated vacancy which did not arise, to be considered for subsequent vacancies by over-stretching the meaning of 'anticipated' to include all other vacancies arising in the Department for a period of one year subsequent to the selection. That would amount to stretching the guidelines too far. This view has found support in the Apex Court's judgment relied upon by the respondents in Shankarsan Dash Vs. Union of India (AIR 1991 SC 1612). The Apex Court has made it clear that no indefensible right to be appointed accrued to a successful candidate and the State is not under legal obligation to fill up all or any of the vacancies. The Apex Court held as follows:

"It cannot be said that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily, the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless

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the relevant recruitment rules so indicate the State is under no legal duty to fill up all or any of the 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."

13 The learned counsel for the applicant on the other hand relied on the judgment of the Apex Court in Oriental Insurance Co. Ltd. Vs. T.S. Sastry (2004) 1 SCC 136 and on the strength of the ratio therein has argued that the panel prepared earlier should have been made applicable to all the vacancies occurring in that particular year including those on account of any new post or any vacancy occurring by way of test/examination, etc. and that there is no provision laying down that a vacancy that has occurred owing to the creation of new post cannot be filled up from the panel during which it remains valid. In order to accept this contention it is to be seen whether the select list in this case was operative and its validity had not expired. The select list having been published in June, 2003 would be valid till June, 2004. For the posts created in November, 2003 which were only notified on 13.9.2004, the earlier notification in November, 2003 having been cancelled the validity of the list had expired by which time the fresh notification was issued. In any case, once the fresh selection process has commenced, the previous panel would be deemed to have lapsed and no appointment could be made therefrom. In the case of the applicant herein he has also forfeited his rights if at all he had any by

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participating in the fresh selection and not succeeding. Under these circumstances the applicant has no indefensible right for consideration for appointment against the two vacancies notified on 13.9.2004. We are fortified in taking this view after perusing the judgment in State of U.P and Ors Vs. Rajkumar Sharma and Ors. (2006 SCC(L&S) 565) in which it is held that the selectees cannot claim appointment as a matter of right and mere inclusion in select list does not confer any right to be selected even if some of the vacancies remained unfilled and the candidates cannot claim that they have been subjected to hostile discrimination. This judgment has also taken in to account several other judgments of the Apex Court in this regard as revealed in the observations in paras 14, 15 and 16 therein :

“14. Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the select list does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidate concerned cannot claim that they have been given a hostile discrimination.


15 Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake (See Sneh Prabha V.I State of UP (1996)7 SCC 426), Secy, Jaipur Development Authority Vs. Daulat Mal Jain (1997) 1 SCC 35), State of Haryana V. Ram Kumar Mann, (1997) 3 SCC Faridabad CT Scan Centre Vs. DG Health Services (1997) 7SSCC 321), Jalandhar Improvement Trust Vs. Sampuran Singh (1999)3 SCC 494), State of Punjab Vs. Dr. Rajeev Sarwal (1999) 9 SCC 548), Yogesh Kumar Vs. Govt. Of NCT, Delhi (2003) 3 SCC 548) Union of India Vs. International trading CO (2003) 5 SCC 437) and Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit Vs. President Indore Development Authority(2006) 2 SCC 604)

16 In view of the aforesaid, the High Court after having correctly indicated the legal position has failed to apply the same to the factual scenario in its proper perspective. The basic fallacy

in the judgment of the learned Single Judge and the Division Bench is that they proceeded under the presumption that the select list was in force. This view is clearly wrong."

14 By virtue of the above judgment, even candidates selected against a particular vacancy, have no right to insist that the posts shall be filled, the applicant in this case is claiming a vacancy which arose subsequent to his selection, for which he was not considered at all.

15 The earlier judgments of this Tribunal in OAs 1045/96 and 1030/2003 also do not come to the rescue of the applicant. The facts and circumstances of the case in 1045/96 are in a totally different context as the applicant therein was aggrieved by his non-appointment after inclusion in the Select list for IPS on account of the variation in the number of vacancies after the Select list was prepared. The facts in O.A.1030/03 no doubt pertain to the notification issued by the same respondents for the posts of TGTs but in a different discipline in "Hindi". But the cause of action arose in a different context, the applicant therein was a wait-listed candidate and another person had been included against an anticipated vacancy. When one of the regular candidates did not join duty the anticipated vacancy candidate was appointed bypassing the wait-listed candidate. The Tribunal directed that the wait-listed candidate be appointed against the vacancy and that the anticipated vacancy candidate can be considered against the re-notified vacancy. In fact the Tribunal had clearly ruled that the wait-listed candidate had a preferential claim over the anticipated vacancy



candidate. Moreover the second notification was issued during the period of validity of the Select List.

16 Therefore in the light of the factual position and the law as discussed above, the applicant has no case for appointment against the subsequent vacancies which were notified after the expiry of the validity of the select list and reinforced by the fact that he competed in the second selection also and after finding that he is not qualified has approached this Tribunal to challenge his non-appointment.

17 In the result, the interim order dated 16.3.2005 is vacated. The O.A. is dismissed.

Dated 10th October, 2006.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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