

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.199/10

Dated this the 21st day of October, 2010

C O R A M

HON'BLE MR JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

- 1 P.I.Hazakoya S/o P.Mohammed Koya
Head Constable B.No.251, Police Station, Amini
residing at Puthiyaillam House
Kalpeni Island, Lakshadweep.
- 2 P.I.Sainul Hameed S/o M.P.Kasmi
Police Constable B.No.334,Police Station, Androth
residing at Puthiyaillam House
Kavaratti Island, Lakshadweep.
- 3 P.I.Kunhikoya S/o P.Mohammed Koya
Police Constable B.No.341S.B(HQ), PL HQ, Kavaratti
residing at Puthiyaillam House
Kalpeni Island, Lakshadweep.
- 4 P. Kunhikoya S/o Aboosalakoya
Police Constable B.No.340, Police Headquarters,Kavaratti,
residing at Pakkimmad House
Amini Island, Lakshadweep.
- 5 M.C. Koya S/o P.I. Sayed Muhammed Koya
Police Constable B.No.373, Police Station, Agathi
residing at Melachedam House
Kalpeni Island, Lakshadweep.
- 6 P.Ponkidavu Alias Noorul Ammeen
S/o K.K.Chkeriya Koya
Police Constable B.No.337,Police Station, Kiltan Island
residing at Ponikkam House
Kiltan Island, U.T. Of Lakshadweep.

7 K.I.Mohammed Koya S/o Hamsakoya
Police Constable B.No.346,
as Police Station, Kavaratti
residing at Kadapurathaillam House
Chetlat Island, Lakshadweep.

..Applicants

By Advocate Mr. M.V. Thampan

Vs

1 The Superintendent of Police
Union Territory of Lakshadweep
Kavaratti.

2 The Administrator
Union Territory of Lakshadweep
Kavaratti

3 Union of Indian represented by the Secretary
Ministry of Home Affairs
New Delhi.

..Respondents

By Advocate Mr. S. Radhakrishnan for R1 & 2
By Advocate Mr. A.D. Raveendra Prasad for R-3

The Application having been heard on 7.10.2010 the Tribunal delivered
the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicants are working as Constables (except the 1st applicant who is a Head Constable) in the Police Department of the U.T. of Lakshadweep. Their grievance is that though there are 13 vacancies of Assistant Sub Inspector (Wireless Operator) which arose during the period 2003 to 2009 when the unamended rules were in force, they are not being considered for promotion to the post of as per Recruitment Rules in force. According to the applicants, vacancies in all the 12



posts have arisen prior to the amendment to the Recruitment Rules notified on 17.12.2008(Annexure A-8). All the applicants are Matriculates having 24 to 34 years of service. According to them, the post of ASI (Wireless) and ASI (Radio Technicians) are promotion posts from among Head Constables and Constables who are Matriculates or equivalent, with English, Science and Mathematics, within the age limit of 20 and 30 years. However, by A-2 amendment, the upper age limit for the post of ASI(Wireless) was done away with and it was made a 100% promotion post on the basis of seniority alone. The Recruitment Rules were further amended on 19.12.1984 according to which the post of ASI(Wireless) was made a non-selection post and the selection was made by promotion failing which by deputation. The selection is to be made on the basis of seniority among the Head Constables and Constables by conducting a qualifying test of Matriculation standard. In the year 1984, the 1st applicant and some others appeared in the written test, though the 1st applicant passed the written examination, he was not selected as he did not pass X standard. One Shri A.K. Thangakoya, a Police Constable who was denied promotion, filed O.A. 374/91 which was allowed by the Tribunal declaring that the applicant was entitled to promotion with all increments. After 1984, the test was not conducted for long time. The next test was held only on 22.2.2004. The applicants and a few more others had appeared but none of them passed because of higher cut off mark fixed by the respondents. Moreover, the question papers were set from the 12th standard of CBSE syllabus. The respondents made various attempt to fill up those posts by deputation but they could not get any suitable candidate. Aggrieved, the applicants along with others filed O.A. 634/2006 which was disposed of by the Tribunal



by order dated 21.6.2007 directing the respondents to conduct test without insisting on upper age limit. No follow up action was taken by the respondents. However, by notification dated 17.12.2008 they amended the Recruitment Rules by earmarking 50% of the vacancies for direct recruitment, Degree/Diploma was made the minimum qualification. The Administration also issued A-9 notification inviting applications indicating 8 posts for direct recruitment. The applicants submitted representations against denial of promotion. As the respondents have not taken any action on the representations and are taking hasty steps to fill up the posts on the basis of A-9 notification, they have filed this O.A for a declaration that the 12 posts of ASI (Wireless Operator) can be filled only on the basis of A-1 Rules as amended by A-2 and A-3, that setting apart of 50% of the vacancies by direct recruitment is arbitrary, discriminatory and violative of the decisions of the Tribunal/Apex Court, to quash A-8 and A-9, to issue direction to the respondents to fill up all the posts which arose prior to the date of A-8 on the basis of A-1, A-2 and A-3, and to direct the respondents to take steps to fill up the existing posts from among the Head Constables and Police Constables of Lakshadweep Police only. They urged that the applicants have no promotional avenues and that the posts sanctioned are to be filled up on the basis of the Rules in force on the date of occurrence of the vacancy.

2 The respondents resisted the O.A by filing reply statement. They admitted that the vacancies occurred between 2003 and 2009. They stated that when the proposal to conduct the test for filling up the vacancies of ASI(W/O), the 1st applicant and few others filed O.A. Nos. 105/2007 and other connected cases before the Tribunal. The

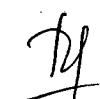


Tribunal disposed of the O.A with a direction. The respondents stated that Annexure A-8 notification is in full compliance with the direction of the Tribunal in the above OAs and that the respondents after due consideration and consulting other sister organisations had taken a conscious decision to allow 50% reservation for the departmental candidates by way of promotion so that the grievance of the personnel and the efficiency of the communication set up are taken care of. The respondents made repeated efforts to fill up the vacancies since 2004 but none of the candidates who appeared in the promotion test held in 2004 could pass the test. They further stated that the applicants are enjoying ACP/MACP financial upgradations in lieu of promotions and contended that therefore there is no genuine grievance as contended by the applicants.

3 The applicants filed rejoinder reiterating their averments in the O.A.

4 We have heard the learned counsel appearing on both sides and have gone through the pleadings and documents produced before us.

5 The main contention of the applicants is that they are not able to pass the departmental test conducted for 50% of the posts under promotion quota as the minimum standard prescribed is XII standard of CBSE syllabus. Hence they seek that the test should be conducted in accordance with the recruitment rules prevailing at the time of occurrence of the vacancy. It is also their case that with the notification of the amended recruitment rules, the vacancies under promotion quota has come down to 50% which would adversely affect



their promotional avenues. The contention of the respondents is that the rules were amended to improve the standard in all spheres of functioning of the Police organisation and also to reform and modernize the police force and this would not and should not imply that the authority should sacrifice quality in a post of technical nature like wireless and radio technology. On account of vast improvements in the communication field, it is necessary to have appropriate educationally qualified persons to handle the sophisticated equipments in the police communication net work. Such prescription in the Recruitment Rules regarding educational qualifications and standards for examination are the exclusive domain of the Administration and the the respondents have the authority to determine these in accordance with their requirements and the need to reform and modernize the Police force.

6 We notice that the post of ASI (Wireless Operator) is a technically skilled post. The respondents Department wanted to update the communication system in the Police Department. Therefore, technically qualified personnel are essential for the proper upkeep of the machineries and equipments and for maintaining the communication in an efficient manner which is run round the clock in view of the threat perception of the U.T. Of Lakshadweep and the security scenario in the country. The respondents pursuant to the direction of the Tribunal in the batch of cases referred to above, after due consideration and after consulting other sister organisations has taken a conscious decision to allow 50% reservation for the departmental candidates. In the circumstances, we do not find any infirmity with the action of the respondents in amending the Recruitments Rules.

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7 We also find merit in the contention of the respondents that with the introduction of MACP, the career prospects of the applicants have become more bright and they would be eligible for financial upgradation every ten years of service subject to a maximum of three.

8 A perusal of the pleadings would show that the respondents have not conducted departmental test from 1984 to 22.2.2004. It is also true that the applicants did not pass the test when they appeared in 2004. In fact, in OA Nos. 258/07 and connected cases a few Police Constables approached the Tribunal for a declaration that they are entitled to be considered for promotion to the post of ASI (Wireless/Radio Technician) on the basis of a test conducted in February, 2004 without fixing any cut off marks. The Tribunal dismissed the OAs as follows:

".....A bare reading of the above Rule makes it clear that the selection will be made on the basis of seniority from amongst the Hcs/PCs who are matriculates or equivalent and qualify a test in Physics, Chemistry, Mathematics and English, which will be of metric level and conducted by the Police Department and not on a mere test conducted for short listing the candidates as made out by the applicants and therefore, the judgment of the Supreme Court relied upon by the applicants as reported in 2003 11 SCC 559 would not be applicable in the instant case. In a qualifying test in the normal course qualifying marks are to be prescribed and it is not necessary that all such details are to be published at the time of inviting applications. It is not a test for short listing the candidates. These are departmental tests and the procedure and the marks prescribed in such a general test is known to every one by constant practice. Fixing minimum qualification of matriculation or equivalent and qualifying in a test for recommendation of the candidates to the DPC for selection, in any case, cannot be held to be arbitrary. No doubt the respondents have amended the Recruitment Rules to make the



post as promotion post in order to improve the standard in all spheres of functioning of the police organisation and also to reform and modernize the police force and this would not and should not imply that the authority should sacrifice quality in a post of technical nature like wireless and radio technology. As rightly contended by the respondents on account of vast improvements in the communication field, it is necessary to have appropriate educationally qualified persons to deal with sophisticated equipments in the police communication net work. In any case, such prescription in the Recruitment Rules regarding educational qualifications and standards for examination are the exclusive domain of the Administration and the respondents have the authority to determine these in accordance with their requirements and the need to reform and modernize the Police force.

8 However, we would like to observe that since the post of ASI(Wireless) and ASI(Radio Technician) have been made a promotion post, the respondents cannot continue to prescribe the qualification and age limit etc. as prescribed earlier for direct recruits, without taking a conscious decision in the matter and also without considering the grievances and view point of the employees of the Department. Since the future test, which is proposed to be conducted in 2006 has been stayed and the matter is pending consideration, we hope that the respondents would take into account the applicant's grievances in this regard also before taking a final decision on the Recruitment Rules.

9 In the light of our observations regarding the delay in filing the original applications and also on the merit of the applications, the reliefs prayed for in these applications cannot be granted and the original applications stand dismissed. However, there will be no order as to costs."

Pursuant to the above direction, the respondents have amended the Recritment Rules in 2008.

9 There is no doubt in our mind to hold that the amended Recruitment Rules have only prospective application. In that view of

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the matter, the O.A is disposed of directing the respondents to consider filling up of vacancies of ASI(Wireless Operator) which occurred after 22.2.2004 till the notification of the amended Recruitment Rules on 17.12.2008, by promotion, in accordance with the rules on the subject.

10 The O.A is disposed of as above. No costs.

Dated 21st October, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER


JUSTICE K. THANKAPPAN
JUDICIAL MEMBER

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