

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 214 OF 2013

Friday, this the 11th day of September, 2015

CORAM:

**HON'BLE Mr. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr.P.K. PRADHAN, ADMINISTRATIVE MEMBER**

P. Mohammed Nishad,
S/o. T. Sayed Koya,
Palliat House, Androth Island,
U.T of Lakshadweep – 682 551.

- Applicant

(By Advocate Mr. M.P. Krishnan Nair)

Versus

1. Union of India represented by Administrator
Union Territory of Lakshadweep,
Kavaratti – 682 555.
 2. The Collector cum Development Commissioner,
U.T of Lakshadweep – 682 555.
 3. The Director of Education,
U.T of Lakshadweep,
Kavaratti – 682 555.
 4. University of Calicut (Lakshadweep Cell)
represented by Registrar,
Calicut University (P.O),
Calicut – 673 635.
 5. LBS Centre for Science & Technology,
Nandavanam, Palayam,
Thiruvananthapuram – 695 033.
 6. K.L. Aneesa, D/o. Hussain Athirimathigothi,
Post Graduate Teacher (On contract basis),
Government Girls High School, Kavaratti,
U.T of Lakshadweep. Residing at :
"Bavana", Bada Village, Minicoy Island,
U.T of Lakshadweep.
- Respondents

(By Advocates Mr. S. Radhakrishnan for R-1 to 3)
Mr. P.V. Mohanan for R- 6)

The application having been heard on 07.09.2015, the Tribunal on 11.09.2015 delivered the following:

ORDER

P.K. PRADHAN, ADMINISTRATIVE MEMBER

This O.A has been filed seeking the following reliefs:-

- "i) To call for the entire records leading to the issue of Annexure A-15 and all action taken in pursuance of the Annexure A-15 and quash the same;

ii) To declare that decision taken by Selection Committee on 12.12.2012 and their revaluation of the answer papers of the Teachers Eligibility Test (T.E.T) conducted on 08.05.2011 and preparation of the revised Rank List on the basis of revised marks awarded to the candidates and recommendation of the Selection Committee to the Administration to put K.L. Aneesa in Sl. No. 8 and applicant as Sl. No. 9 and subsequent issuance of Annexure A-15 on the basis of recommendation by 3rd respondent, is highly illegal, arbitrary, malafide in nature, discriminatory in character, *ab initio void*, unjust, unfair, unreasonable and unsustainable and also in violation of the direction of this Hon'ble Tribunal in Annexure A-14 judgment.

iii) to declare that Annexure A-15 order dated 15.01.2013 issued by the 3rd respondent terminating the service of the applicant as Trained Graduate Teacher (English) on the basis of Selection Committee dated 12.12.2012 elevating Smt. Aneesa K.L to Sl. No. 8 and Shri Mohammed Nishad P. (applicant herein) as Sl. No. 9 and thereby termination of the applicant, is highly illegal, arbitrary, malafide in nature, discriminatory in character, *ab initio void*, unjust, unfair, unfair, unreasonable and unsustainable and also in violation of the direction of this Hon'ble Tribunal in Annexure A-14 judgment and direct the 3rd respondent to set aside Annexure A-15 order forthwith as same is highly illegal, arbitrary, malafide in nature, discriminatory in character, unjust, unfair, unreasonable and unsustainable and also in violation of the direction of this Hon'ble Tribunal in Annexure A-14 judgment.

iv) to direct the 3rd respondent to reinstate the applicant in service forthwith and allow him to continue as Trained Graduate Teacher (English), in Government Senior Basic School, Minicoy as if there is no termination order by Exhibit P-15 and also give all service and consequential monetary benefits;

v) To issue a direction to 1st respondent to conduct an impartial enquiry by an outside agency like, Central Bureau of Investigation (C.B.I) regarding the preparation of the question papers for Trained Graduate Teachers (TGT), Post Graduate Teachers (PGT) and also the illegality irregularities in conducting the above test and cancellation of the Post Graduate Teachers (PGT) Test and issuance of the question papers prepared for the Post Graduate Teachers' Test to Trained Graduate Teachers candidates and all subsequent action and also punish them according to law, if anybody found guilty.

vi) To direct the 1st respondent to dispose of Annexure A-23 according to law at the earliest.

vii) to grant such other reliefs as this Hon'ble Court may deems fit and proper in the facts and circumstances of the case, and,

viii) to award cost to the applicant."

2. The applicant who belongs to Scheduled Tribe category applied for the post of School Teacher in response to a notification (Annexure A-5) issued by the 3rd respondent on 22.02.2011 inviting applications from qualified local candidates for appointment to the post of Trained Graduate Teacher (English). According to the selection criteria, the weightage of marks given were, 40% for Academic qualification, 50% for Teacher

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Eligibility Test and 10% for personal interview. Written test was conducted on 08.05.2011 followed by interview. Thereafter, the 3rd respondent, i.e., Directorate of Education issued the results of the examination on 25.07.2011 (Annexure A11) and the applicant was at Sl. No. 8 in the said list. Based on the said selection, offer of appointment was given to 8 persons including the applicant and he was appointed and posted at Government SBS, Minicoy (Annexure A-12). The applicant joined the post on 22.10.2011. Thereafter, the 6th respondent i.e. Smt K.L. Aneesa approached this Tribunal in O.A No. 1033/2011 for quashing Annexure A-8 therein and for her inclusion in the selection list ranked at Sl. No. 8 in place of applicant claiming that she is entitled to get additional marks for correct answers to three questions and sought direction for revaluation of the answer sheets. This Tribunal vide dated 10.10.2012 (Annexure A-14) in the aforesaid O.A passed the following orders:-

" From the facts of the case, it is quite clear that the applicant has correctly answered the question Nos. 76 and 88, but she was not awarded marks for the same. Therefore, it is just and fair that the applicant should be given marks for the correct answers. As all choices are not correct as far as the question No. 99 is concerned, it should be omitted. The answer sheets of all candidates will have to be re-evaluated to the above extent. Thus, the marks will have to be assigned out of 149 instead of 150 and a fresh rank list have to be prepared in respect of TET (English) and all consequential action will follow. Ordered accordingly. The above exercise should be completed as early as possible, at any rate, not later than three months from the date of receipt of a copy of this order. Annexure A-1 to the extent it covers TGT(English) is quashed but all those who are in position may continue so till appointments are made on the basis of a fresh select list."

3. Thereafter, the Director of Education issued Office Order dated 15.01.2013 (Annexure A-15) vide which Smt Aneesa K.L was elevated to Sl. No. 8 while the applicant was brought down to Sl. No. 9 and simultaneously the applicant's service was terminated with immediate effect. Office Order F.No, 18/3/2009-Edn/Estt(2)/41 stated as follows:-

".....The review meeting of the selection committee was held on 12.12.2012 and revaluated the answer sheet of the Teacher Eligibility Test (English) conducted on 08.05.2011. Revised Rank list prepared based on the revised marks awarded to the candidates. Therefore, the



recommendation of the selection committee vide its minutes dated 19.07.2011 is revised in compliance of the judgment order vide 3rd cited. Accordingly, the revised rank list is published on 15.01.2013

Smt Aneesa K.L is elevated to Sl. No. 8 and Shri Mohammed Nishad P., S/o. Sayed Koya T. Palliat House, Androth is become Stl. No. 9 as per the revised rank list.

Therefore, the Administrator, U.T. Of Lakshadweep is pleased to *terminate the service of Shri Mohammed Nihad P., Trained Graduate Teacher (English), Government Senior Basic School, with immediate effect.*

This issues with the approval of the Administrator, U.T. Of Lakshadweep vide Diary No. 114 dated 10.01.2013."

4. The applicant in the O.A has further pointed out several irregularities in the question paper for Teachers Eligibility Test (English) stating that the respondents should have revaluated the entire answer sheets once again and published the rank list of all the 35 candidates following the revaluation, but they have only issued a select list changing the position of the applicant from Sl. No. 8 to 9 and the 6th respondent at Sl. 9 to 8. He submitted that the applicant had taken leave from 17.01.2013 to 28.01.2013 (Annexure A17 to A-19). But, 3rd respondent issued an order dated 15.01.2013 terminating the applicant with immediate effect, even though no show cause notice was issued to the applicant before taking a decision and issue the said order. Therefore, he prayed for granting the relief as sought for.

5. The respondents have filed their reply statement. Respondent No. 1 to 3 in their reply submitted that in O.A No. 1033/2011 filed by Smt K.L. Aneesa, this Tribunal vide order dated 10.10.2012 directed the respondents to reconsider the selection in terms of the directions given therein and Annexure A-1 select list to the post of TGT (English) was quashed to the extent it covers selection to the post of TGT (English). The applicant, who was a respondent in the said O.A took up the matter in judicial review in the Hon'ble High Court of Kerala in OP(CAT) No. 302/2013. The High Court vide order dated 04.02.2013 [Annexure R1(a)] dismissed the said O.P and



held in para 4 of the order as follows:

"The first contention is that there were other wrong answers which the applicant/1st respondent failed to point out with ulterior motive. We are not impressed with the said contentions, because the 5th respondent (6th) was before the Tribunal and could have very well pointed out any other mistakes that cropped in the answer key. The University also pointed out the only 3 mistakes specifically referred to by the applicant before the Tribunal".

The respondents further submitted that the applicant has pointed out some anomalies in the test but he lacks bonafides. He raising allegations about the whole recruitment procedures to the post only after he was issued with the termination order. He did not raise any issue, when the O.A No. 1033/2011 was taken up in which he himself was a respondent. The revaluation and recasting of marks was done strictly in compliance of the direction of this Tribunal based on which the applicant's position in the merit list came down to 9th and he was placed first in the wait list while the respondent No. 6 came to be placed at 8th rank. The details are reflected in the Minutes of the Recruitment Committee [Annexure R1(e)]. Therefore, the contention of the applicant has no merit and the O.A is liable to be dismissed.

6. The 6th respondent has also filed reply statement in which it is submitted that the applicant was not placed in the merit list in the selection to the post of TGT(English) based on the initial selection made. Based on educational qualification, marks attained in the Teachers Eligibility Test and personal interview, a rank list of eligible candidates were prepared in which the 6th respondent was placed at Sl. No. 9. Since her name was not included in the final select list, she obtained under RTI Act the relevant materials which revealed that the evaluation of the TGT examination was not done correctly and respondents did grant marks in spite of her giving correct answers to question Nos. 76. 88 and 99. Thereafter, she filed O.A 1033/2011 impleading the present applicant also as a respondent



contending that she is entitled to be awarded marks in respect of questions Nos. 76, 88 and 99 and as such should have included in the select list on 26.02.2011. On completion of the pleadings, this Tribunal on 10.10.2012 allowed the O.A directing for revaluation of the answer sheets. Thereafter, the present applicant had filed O.P (CAT) No. 302/2013, which was dismissed. According to the 6th respondent, she was actually entitled upto a total marks of 52.72, she was awarded 52.38 marks. However, she has been rightly placed at Rank No. 8 in place of the present applicant in the revised rank list prepared by the Review Selection committee in its meeting dated 12.12.2011 pursuant to the order passed by this Tribunal in O.A No. 1033/2011. The applicant has not challenged Annexure R-6(f) dated 15.01.2013 which communicated the select list dated 15.01.2013 based on the revaluation of marks. Since the 6th respondent was elevated to Sl. No. 8, the services of the applicant had to be dispensed in order to accommodate her as a selected candidate. The relief sought for cannot be considered as the issue is covered by the order of this Tribunal in the earlier O.A No.1033/2011 and also the judgment of the Hon'ble High Court in O.P (CAT) No. 302/2013.

7. The applicant had submitted a rejoinder in which he has mostly reiterated the points made in the O.A and also highlighted the fact that order of this Tribunal in O.A No. 1033/2011 was to conduct revaluation and not recalculation. The revaluation had to be done for all the 149 questions and not for three questions only. He also submitted that against the order of the Hon'ble High Court in O.P. (CAT) 302/2013, the applicant had filed SLP before the Hon'ble Supreme Court. The same was dismissed. Thereafter, he had filed Review Petition No. 722/2013 on 18.07.2013 and the same is pending before the Hon'ble High Court. Therefore, the applicant should be allowed to continue in service as TGT without any break.



8. Heard the learned counsel for the parties. Learned counsel for the applicant referred to order of this Tribunal in O.A No. 1033/2011 at Annexure A-14 and submitted that the Tribunal had clearly directed revaluation of the answer sheets of all the candidates. Therefore, the revaluation of the OMR sheets should have been taken up once again by the institute concerned and not by a committee constituted by the respondents. Further, a complete merit list of all the candidates were to be prepared rather than restricting into a select list, in which the only the position of the applicant and the 6th respondent was inter changed. He further argued that Annexure A-15 order was issued terminating the service of the applicant without issuing any show cause notice, which practically amounts to denial of natural justice to him. Moreover, even though, in the order dated 10.10.2012 passed in O.A 1033/2011 it was clearly indicated that all those who were in position may continue till appointments are made on the basis of a fresh select list, the termination order was issued on 15.01.2013 itself i.e. on the same day when the select list was published. Therefore, the action of the respondents are clearly malafide and arbitrary. Since the applicant was initially selected by the respondents for the post and continued in service for more than a year, the matter ought to have been considered sympathetically by the respondents and he should be allowed to continue in office, if necessary, by creating a supernumerary post.

9. Learned counsel for the official respondents referred to the order passed by this Tribunal and submitted that the order clearly referred to questions Nos. 76, 88 and 99 and directed that the all candidates will have to be re-evaluated to the above extent. This was accordingly done by the selection committee in its meeting held on 12.12.2012. Based on the revaluation, a fresh select list was published [Annexure R-1 (f)] which shows the revised rank list for the post of TGT(English) though comprising of all the



candidates and based on the said rank list the position of the applicant and 6th respondent got changed. Based on the total marks secured the applicant was relegated to Sl. No 9 while the respondent No. 6 was placed at Sl. No. 8. Since only 8 posts are available the appointment of the applicant had to be terminated in order to accommodate the 6th respondent who was placed at Sl. No. 8. The learned counsel also referred to the order of the Hon'ble High Court in O.P (CAT) No. 302/2013, which was filed on 20.01.2013 i.e. after the service of the applicant was terminated and submitted that the order dated 04.02.2013 in the said O.P have taken into consideration to the fact of revaluation and the fact that the applicant was displaced to Rank No.9. When the O.P was dismissed, the applicant again approached the Hon'ble Apex Court against the Hon'ble High Court's order but the same was dismissed. Since the entire revaluation and consequent follow up action had been done strictly in compliance of this Tribunal's order, there is no merit in the O.A.

10. The learned counsel for the respondent No. 6 supported the submissions made by the respondents and submitted that the entire exercise has been done strictly in accordance with the decision of this Tribunal in the earlier O.A, and hence there is no merit in the contention of the applicant. The applicant was placed at Sl. No. 9 by the Selection Committee based on marks secured by him after the revaluation was undertaken taking into account the performance of the candidates in the test and interview and their academic qualifications. Hence, there is no merit in the O.A.

11. We have carefully considered the facts of the case and submissions made by the respondents in the O.A.



12. The issues raised in the present O.A is a consequence of the earlier order passed by this Tribunal in O.A of 1033/2011 which was filed by the respondent No. 6 in the present O.A. In the said O.A, the present respondent No. 6 had approached this Tribunal pointing out that she had given correct answers to 3 questions but was not awarded marks. The answer in the key was wrong and hence the procedure to award marks to the questions in the Teachers Eligibility Test was not correct. After due consideration of all the entire facts, this Tribunal held that the present 6th respondent is entitled to get marks for the correct answers to question Nos. 76 and 88 as also all others who, like her, gave correct answers. It was also held that as far as question No. 99 is concerned as all the choices are not correct, the same should be omitted. Hence it was directed that answer sheets of all the candidates will have to be revaluated to that extent and a fresh rank list will have to be prepared. On this issue, a question was raised by the learned counsel for the applicant that the entire answer sheets should have been revaluated for all the candidates by the institute. Per contra, the learned counsel for the respondents submitted that since the revaluation was limited only to 2 questions and there were only 35 candidates, it was not necessary to have OMR sheet revaluated by the institute as it can easily be done by the Selection Committee who has to check the answers to these questions only once again. This was done by the Selection Committee in the meeting held on 12.12.2012 and based on the marks received by the candidates a revised rank list was prepared followed by a revised select list for the 8 posts of TGT (E). In the said revised list, based on the total marks secured the present applicant, who was originally at Sl. No. 8 came down to Sl. No. 9 while the 6th respondent's position was elevated to Sl. No. 8. Since consequential action had to follow the fresh rank list as per order of the Tribunal, the only option left to the respondent was to issue offer of appointment to 6th respondent who came to be placed at Sl. No.8 in place of



the present applicant. Therefore, there is no scope or necessity for the respondent to issue further show cause notice prior to the termination of the service of the applicant as argued by the learned counsel for the applicant.

13. The applicant was a party in the earlier O.A and well aware of the order for revaluation and consequential action following it. In the present O.A, the applicant also has mentioned many other irregularities in the selection of TGT(E). The applicant did not highlight these issues/irregularities during the earlier proceedings, even though he was a party. This aspect has also been dealt with in the order of the Hon'ble High Court of Kerala in O.P (CAT) 302/2013 which was filed by present applicant against the order passed in O.A 1033/11. In the said O.AP (CAT) 302/2013 the present applicant had also mentioned about other wrong answers and the Hon'ble High Court vide Para 4 & 5 of its order in the said O.P stated as follows:-

"4. The 6th respondent / petitioner raises two contentions before us. The 1st contention that there were other wrong answers, which the applicant/1st respondent failed to point out with ulterior motives. We are not impressed with the said contention, because the 5th respondent was before the Tribunal and could have very well pointed out any other mistakes that cropped up in the answer key. The University also pointed out only the three mistakes specifically referred to by the applicant before the Tribunal.

5. The next ground is that the person who is placed at Sl. No. 1 is included in the revised list for Post Graduate Teacher (English) and the resultant vacancy ought to be granted to the petitioner herein. We remind ourselves that the present Original Petition is one filed challenging the order of the Central Administrative Tribunal in which the petitioner was the 6th respondent and obviously no relief could be granted to him. In any event, the contention that the 1st rank holder would opt for Post Graduate Teacher and, hence there would be a resultant vacancy is in the realm of assumptions; upon which this Court cannot act or issue positive directions.

In the above circumstances, we are of the opinion that the above original petition is devoid of merit and we uphold the order of the Tribunal by dismissing the original petition, however, with no order as to costs."



14. The learned counsel for the applicant has also appealed that since the applicant was duly appointed by the respondent earlier and served for more than a year they should consider the matter sympathetically and appoint him, if necessary by creating a supernumerary post or when a post is available. This is purely a matter for consideration by the official respondents and we are not inclined to give any direction on this plea.

15. From the facts stated in the preceding paragraphs, it is clearly evident that the actions taken was the respondents authorities in this case are clearly in accordance with the direction passed by this Tribunal and we do not find any irregularities in the same. The issues highlighted by the applicant have also been adjudicated by the Hon'ble High Court in O.P. (CAT) 302./2013. Therefore, after due consideration of all aspects of the case, we are of the view that there is no merit in the present O.A and it is liable to be dismissed.

16. Accordingly, the O.A is **dismissed**. No order as to costs.

(Dated, the 11th September, 2015.)



(P.K.PRADHAN)
ADMINISTRATIVE MEMBER



(U. SARATHCHANDRAN)
JUDICIAL MEMBER

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