



**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.Nos.787/2002, 218/2003 & 891/2003

Tuesday, this the 5th day of April, 2005

C O R A M:

**HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER**

1. O.A.No.787/2002

1. *P.P. Pookoya,
Puthiyapura, Kiltan Island
UT of Lakshadweep*
2. *Sadakkathulla. P.,
Padippura, Kavaratti Island,
UT of Lakshadweep* ... Applicants.
(By Advocate N. Nagaresh)

V e r s u s

1. *Union of India represented by Secretary,
Ministry of Home Affairs,
New Delhi*
2. *The Administrator,
U.T. Of Lakshadweep,
Kavaratti.*
3. *The Manager,
Government Press,
UT of Lakshadweep,
Kavaratti.* ... Respondents.
(By Advocates TPM Ibrahim Khan, SCGSC for R-1 and
S. Radhakrishnan for R-2 and R3).

2.O.A. No. 218/2003

1. *B. Mushin,
'Biriyommada',
Kadamath Island,
UT of Lakshadweep.*
2. *C.N. Mahaboop,
"Cheriyanallai House",
Kalpeni Island,
UT of Lakshadweep.* ... Applicants.
(By Advocate N. Nagaresh)

Versus

1. *Union of India represented by
The Administrator,
UT of Lakshadweep,
Kavaratti.*
2. *The Collector Cum Development Commissioner,
UT of Lakshadweep, Kavaratti.*
3. *The Manager, Government Press,
UT of Lakshadweep, Kavaratti.*
4. *K.K. Abdulkhader,
Working as Gumasta in ASO Office (Assistant
Settlement Office),
Union Territory of Lakshadweep,
Residing at Kunnamkulam House,
Kadamath P.O., Lakshadweep. ... Respondents.*

*(By Advocates S. Radhakrishnan for R-1 to R-3 and
K.P. Dandapani (rep.) for R-4).*

3.O.A.No. 891/2003

K.K. Abdulkhader

*Working as Gumasta in Assistant Settlement
Office, Chetlat, Union Territory of Lakshadweep,
Residing at Kunnamkulam House,
Kadamath P.O., Lakshadweep.*

... Applicant.

[By Advocate K.P. Dandapani (rep.)]

Versus

1. *Union of India represented by
The Administrator,
Union Territory of Lakshadweep,
Kavaratti.*
2. *The Manager,
Government Press,
Union Territory of Lakshadweep,
Kavaratti.*
3. *The Collector-Cum-Development Commissioner,
Union Territory of Lakshadweep,
Kavaratti.*
4. *Shri B. Mushin,
Biniyommada,
Kadamath Island,
Union Territory of Lakshadweep*

5. *Shri C.N. Mahaboob,
Cheriyanallai House,
Kalpeni Island,
Union Territory of Lakshadweep.* ... Respondents.

(By Advocates PRR Menon for R-1 to R-3 and
N. Nagresh for R-4 and R-5).

(This application having been heard on 22.3.2005, the
Tribunal on 5th April, 2005, delivered the following:)

ORDER
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

Since the matters are identical and the issue involved is one and the same, they are being disposed of by this common order.

O.A.787/2002

2. All the above O.A.s are identical and challenge is against the same selection. The applicants claims to have passed SSLC and undergone training in the printing press for compositing, proof reading, press work and printing work. All of them have registered their names with Employment Exchange (A-1). They were called for an interview for the post of Mazdoor in the pay scale of Rs.2550-3200 under the 3rd respondent by a telegram A-2 and have appeared for the interview. They understood that they are at Rank No.1 and 2 with another person A.Khalid at Sl.No.3 in the waiting list. No appointment order was issued since there was an O.M. Issued by the Government of India banning all recruitment and selection for a period of one year. According to the applicants, it is presumed that the ban has been lifted as the Administration has

started making appointments to various posts like Mazdoors under the 3rd respondent. Some of the candidates who have attended the interview for the post of Lascar under the Port Department had already been posted during March 2002. Applicants have submitted representations and reminders which did not evoke any response. Therefore they have filed this application seeking the following relief:

- (i) To call for the records relating to A-1 to A-3 and to declare that the applicants are to be posted to the posts of Mazdoor under the 3rd respondent consequent to their selection conducted on 18.3.99 immediately and to direct the respondents to appoint the applicants as Mazdoors under the 3rd respondent.
- (ii) To direct the 2nd respondent to dispose of A-3 representation made by the applicants and to give them a reply immediately.

O.A. 218/2003

3. The applicants are aggrieved by the refusal on the part of the respondents to publish the results of the selection conducted for the post of Compositor Grade II under the 3rd respondent and to issue appointment orders for appointing the applicants as Compositor Grade II consequent on the selection made in March 1999. The claim of the applicants is similar to the above O.A.787/2002. The posts for which they have interviewed were Compositor Grade II. The applicants participated in the written test and the interview conducted on 19.3.99 and they came to know

that they are ranked as No.1 & 2 in the select list. No select list was published nor any appointment order was issued. According to the applicants, it is presumed that the ban has been lifted as the Administration has started making appointments to various posts like Boat Lascars under the 3rd respondent. The first applicants has submitted representation A-3, but no response. Hence this O.A. seeking the following relief:

- (i) To call for the records relating to A-1 to A-7 and to declare that the applicants are to be posted to the posts of Compositor Grade II under the 3rd respondent consequent to their selection conducted on 19.3.99 immediately and to direct the respondents to appoint the applicants as Mazdoors under the 3rd respondent.
- (ii) To direct the respondents to appoint the applicants as Compositor Grade II under the 3rd respondent immediately.

O.A.891/2003

4. The applicant is similarly circumstanced as the applicants in O.A. 218/2003. According to him, he is better qualified to be appointed as Compositor Grade II than respondents 4 and 5 who are applicants in O.A.218/2003. It is averred in the application that the respondents 4 and 5 who do not have the requisite qualification have been erroneously included in the select list. Being aggrieved, the applicant has filed this application seeking the following relief:

- (i) Call for the select list, if any, published

regarding appointment order for the post of Compositor Grade II in pursuance of the interview conducted on 19.3.99 by the 2nd respondent and set aside the same.

(II) Direct the 2nd respondent to appoint the applicant as Compositor Grade II under him forthwith.

5. Shri N Nagaresh and Shri K.P. Dandapani appeared on behalf of the applicants/party respondents and Shri S. Radhakrishnan and Shri P.R. Ramachandra Menon appeared for respondents. Respondents have filed reply statements/additional reply statements and the applicants have filed rejoinders.

6. Learned counsel for applicants in O.A. 787/2002 and O.A. 218/2003 submitted that to their knowledge, the applicants have been ranked as No. 1 & 2 in the waiting list who were interviewed in the year 1999 has lost their seniority and registration with the Employment Exchange. The action of the respondents in denying appointment to the applicants is illegal and arbitrary and the same may be interfered with by this Tribunal. Since the selection was completed and appointment could not be done owing to the Government of India's imposition of ban for recruitment on account of financial stringency which has already been lifted. According to their information, appointments were being made in other departments like Port etc. Therefore, consequent on selection, the applicants have got an indefeasible right for appointment and a direction may be given to that effect.

7. Counsel for the respondents on the other hand strenuously argued that no final selection list has been prepared in accordance with law and therefore there is no valid select list and even if there is a select sit, there cannot be any indefeasible right for the applicants to get appointed and therefore their claim cannot be entertained and liable to dismissed.

8. We have heard the counsel for the respective parties and given due consideration to the arguments, evidence and material placed on record. The applicants are praying for a declaration that they are entitled to be posted in the respective posts under the 3rd respondent and consequent appointment. Admittedly, the applicants were not able to produce any evidence to show that a select list has been drawn by the respondents. From the records it is clear that the Administration has notified inviting applications to the concerned post and to certain extent they have conducted the trade test/written test etc. as prescribed by the rules. One of the contentions taken by the respondents is that as far as the Mazdoor selection is concerned,a committee be duly constituted by the Administrator for conducting trade test for 80% of the marks and an interview will have to be conducted for the remaining 20% (Annexure R1(a) & R1(b) in O.A. 787/2002). Accordingly, a committee was constituted to conduct trade test by notification dated 29.8.93 [R1(c)]. But later on, it was found that the committee is not properly constituted and therefore select list was not published. The irregularity in constitution of the committee was

inquired into and detected and a new committee was constituted and test was conducted. Due to the declaration of elections in the Islands there was some delay and the Government of India, Ministry of Finance vide O.M. Dated 5.8.99 has ordered a review of all the posts lying vacant and till the review is completed, no vacant post shall be filled up except with the approval of the Ministry of Finance. While action for issuing offers was going on, a ban was imposed for filling up the posts and thereby the process was held up for want of vacancy and further the posts lying vacant for more than one year deemed to have been abolished vide circular dated 24th September, 2000. Since the posts were abolished, the appointing authority found it not feasible to proceed with the remaining part of the selection after the trade test or to finalise the select panel. Therefore, there is no valid selection for the posts. Even if the selection process was over, there is no indefeasible right on the applicants to get appointment. It is further pleaded that if the Government is not appointed any person from the select list, still there are vacancies. It is well established that such matters cannot be interfered with by the Court under Article 226 of the Constitution and direct the respondents to effect appointments. If the recommendation of the same Committee can be accepted by the Administration in another selection, we are at a loss to understand why the constitution of the committee has been challenged and reconstitute in this case. Therefore, that cannot be a good ground for the respondents. However, the fact remains that the selection process is not completed and final list is also not issued and therefore, no offer of appointment has been issued to the

applicants. In the given circumstances, it will be profitable to analyse the legal position. The respondents have taken us to various decision reported in:

(2002) 4 SCC 726, Vinodan T v. University of Calicut and others canvassing for the proposition that a ban on filling up of posts imposed by the competent authority is by itself a sufficient ground for cancelling the rank list and in 1998 (7) SCC 273, Dr. Duryodhan Sahu v. Nitendra Kumar Misra, the Hon'ble Supreme Court following the decisions of Amitharani Khundiya v. State of Orissa, held that the scope of judicial review under Sections 14 and 15 of the Act is not plenary in nature and the purpose of constitution of the Tribunal is to remedy the individual grievances of the aggrieved person. The applicant who is challenging the non appointment of the applicants cannot be permitted to question of appointment or other conditions of other employees in other department.

9. The learned counsel for the applicants on the other hand cited a decision of the Hon'ble Supreme Court in 1999 Suppl. (2) SCC 230 R.S. Mittal v. Union of India canvassing the proposition that the respondents are trying to evade appointments of the applicants and finalisation of the selection proceedings for some malafide reasons, known to them only. The said powers of the Government cannot be arbitrary and cannot be upheld on unreasonable and imaginary grounds. We have meticulously gone through the pleadings, materials and evidence placed on record and could not find any malafide on the part of the respondents. If that be so, the respondents would not have ventured to initiate proceedings for such a selection. However, the selection could not be completed for the reasons beyond their control. Therefore, it cannot be said that there is malafide intention in not completing the

selection.

10. The Apex Court in the following decisions had held as follows :

- (I) AIR 1991 SC 1612, Shankarsan Dash vs. Union of India - Inclusion of candidates' name in the merit list does not confer any right to be selected;
- (II) (1994) 6 SCC 151 - State of M.P. and Ors. vs. Raghuvir Singh Yadav and Ors. - A candidate passing the examination does not acquire any vested right for appointment.

11. In the facts and circumstances, we are of the considered view that the O.A.s being bereft of any merit are liable to be dismissed. Accordingly the O.A.s are dismissed. No costs.

Dated, the 5th April, 2005.

Sd/-
H.P. DAS
ADMINISTRATIVE MEMBER

Sd/-
K.V. SACHIDANANDAN
JUDICIAL MEMBER