

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Original Application No. 251 of 2007

Friday, this the 8<sup>th</sup> day of August, 2008

**C O R A M :**

***HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER***  
***HON'BLE MRS. K N K KARTHIYANI, ADMINISTRATIVE MEMBER***

A.D. Amina,  
Adugethi House, Minicoy,  
Now working as PGT (Hindi)  
on Contract Basis,  
Government High School, Amini.

... Applicant.

(By Advocate Mr. K. Jaju Babu)

v e r s u s

1. Union Territory of Lakshadweep,  
Represented by the Administrator,  
Kavarathi, Lakshadweep.

2. The Director of Education,  
Department of Education,  
Union Territory of Lakshadweep,  
Kavaratti.


3. Smt. Saleena C.N.,  
Cheriyannallal House,  
Kalpeni, Lakshadweep.

4. Smt. C.N. Sabeena,  
Cheriyannallal House,  
Kalpeni, Lakshadweep.

... Respondents.

(By Advocates Mr. S. Radhakrishnan (R1-2) & Mr. N. Nagresh (R4).)

The Original Application having been heard on 8.8.08, this Tribunal on  
the same day delivered the following:

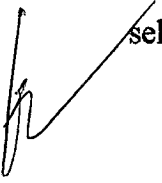


**O R D E R**  
**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The applicant was an aspirant to the post of TGT (Hindi) in the respondents' organization. There were four notified posts and four were selected while the applicant was kept in the waiting list. Likewise, in so far as Respondent No. 3 is concerned, she had been kept in the waiting list in respect of TGT (Maths) in which faculty, there were two posts, and one was in the select list and one in the waiting list. Annexure A-1 refers.

2. Later on, as there was a vacancy in the post of TGT (Hindi) due to retirement of one of the incumbents, the applicant, by Annexure A-2, represented to the Director of Education that against the said vacancy she be appointed, as she had been kept in the waiting list. This request was not favourably considered.

3. Subsequently, for filling up of vacancies that arose in various faculties, notifications were issued and the applicant herein and the third respondents again applied for the respective posts. The Third Respondent did not figure in the select list of Annexure A-6 nor for that matter the applicant and the lone post of TGT (Hindi) was to be filled up by respondent No. 4 to this O.A. The Third respondent was however, accommodated as TGT(Maths) Teacher later, while the applicant was not so appointed. Hence, the applicant had moved the Hon'ble High Court in CWP 6124/2007, which was disposed of with liberty to her to challenge the action of the respondents before this Tribunal. Thus this OA came to be filed. The selected candidate in the last selection to the post of TGT(Maths) has been



impleaded as Respondent No. 4, and Ms. Sabeena as Respondent No.3.

4. The applicant has prayed for a declaration to the effect that the applicant is entitled for inclusion in the list of subsequent appointments vide Annexure A-6 and for a direction to the respondents to appoint the applicant against the vacancy to the post of TGT(Hindi).

5. Official Respondents and respondent no., 4 had filed their respective reply. Official respondents clearly brought out the fact as to how respondent No. 3 came to be appointed. In the selection for two posts of TGT(Maths), one was selected and the Third Respondent was kept in waiting list and one post only was filled, keeping the other post vacant as per a court order in another case (OA 191/2005 filed by one Shri Sayed Mohammed Khaleel). It was after the said OA was dismissed that the vacancy was filled up by appointing the third respondent. Thus, according to the official respondents, there is no similarity in the case of the applicant and of the third respondent. In so far as appointment by selection of the fifth respondent is concerned, the official respondents submitted that since the vacancy arose posterior to the publication of the previous selection list wherein the applicant was kept in waiting list, there is no question of accommodating the applicant against that vacancy.

6. Respondent No. 5 also filed her reply justifying the appointment.

7. Counsel for the applicant argued that as the name of the applicant figured in

waiting list and as subsequently a vacancy arose, the respondents ought to have appointed her against the said vacant post.

8. Official respondents have reiterated their contention as contained in the reply.

9. Arguments were heard and documents perused. In so far comparison with Respondent No 3 is concerned, official respondents have clearly explained the position. Respondent No 3 has been appointed against that vacancy which was already notified in that batch in which she had been kept in waiting list. Thus, it was she who was entitled to be appointed and the official respondents acted correctly. In so far as the case of fifth respondent is concerned, she is the selected candidate under the revised notification in which the applicant was also a candidate. Thus, her selection cannot also be challenged. The applicant's claim is that she having been kept in the waiting list, should have been appointed in the next available vacancy. We are disinclined to agree with the argument advanced by the applicant. For, no one has any indefeasible right for appointment, even after selection. It has been held in the case of *State of M.P. v. Sanjay Kumar Pathak*, (2008) 1 SCC 456 as under:-

"20. It is well known that even selected candidates do not have legal right in this behalf. (See *Shankarsan Dash v. Union of India* and *Asha Kaul v. State of J&K*)

21. In *K. Jayamohan v. State of Kerala* this Court held:

"5. It is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right to appointment. It is open to the Government to make the appointment or



not. Even if there is any vacancy, it is not incumbent upon the Government to fill up the same. But the appointing authority must give reasonable explanation for non-appointment. Equally, the Public Service Commission/recruitment agency shall prepare a waiting list only to the extent of anticipated vacancies. In view of the above settled legal position, no error is found in the judgment of the High Court warranting interference."

10. Again, as regards waitlisted candidates, the law has been crystallized by the Apex Court in the case of *Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat*, 1994 Supp (2) SCC 591 as under:-

**9.** A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.

11. In view of the above settled position, the applicant could not make out a case. Accordingly, the OA is dismissed. No costs.

  
(K N K KARTHIAYAND)  
ADMINISTRATIVE MEMBER

  
(Dr. K B S RAJAN)  
JUDICIAL MEMBER