CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

the 6th day of July, 2007

OA No.258/07, OA 105/07, OA 226/07 and OA 859/06

CORAM:

HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN

HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER

(1) O.A. No.258 of 2007

A.P.Fathahulla,

S/o Moideen Kakkad Ahammed Haji,

Police Constable B.No.359,

Police Station, Kadamath,

Union Territory of Lakshadweep. ..Applicant

(By advocates : Mr. MV Thampan)

-Versus-

1. The Superintendent of Police,

Union Territory of Lakshadweep, Kavaratti.

2. The Administrator,

Union Territory of Lakshadweep, Kavaratti.

3. Union of India,

represented by the Secretary,

Ministry of Home Affairs, New Delhi. .. Respondents

(By Advocates: Mr. Shafik, MA for Respondent No.1 and 2

Mr. Mr.TPM Ibrahim Khan,SCGSC for Respondent No.3)

(2) O.A. No.105 of 2007

(1) P.I.Kamsakoya,

S/o P.Mohammad Koya,

Police Constable B No.215,

Police Station, Minikoi

Union Territory of Lakshadweep.

(2) P.I.Kunhi Koya,

Son of P Mohamed Koya, Police Constable B.No.341,

SB Unit, Kochi. ..Applicants

(By advocates : Mr. MV Thampan)

-Versus-

1. The Superintendent of Police,

Union Territory of Lakshadweep, Kavaratti.

2. The Administrator,

Union Territory of Lakshadweep, Kavaratti.

3. Union of India,

represented by the Secretary,

Ministry of Home Affairs, New Delhi. .. Respondents

(By Advocates: Mr. Shafik, MA for Respondent No.1 and 2

Mr. PS Biju, ACGSC for Respondent No.3)

(3) O.A. No.226 of 2007

(1)Aboosala N.

S/o Kannipvra Sayed Ismail,

Police Constable B.No.328,

Police Station, Kavaratty

Union Territory of Lakshadweep.

(2) Sulaiman T.K.

S/o Abdul Khadar T.K.

Police Station Kadamath,

Union Territory of Lakshadweep. ..Applicants

(By advocates : Mr. MV Thampan)

-Versus-

1. The Superintendent of Police,

Union Territory of Lakshadweep, Kavaratti.

2. The Administrator,

Union Territory of Lakshadweep, Kavaratti.

3. Union of India,

represented by the Secretary,

Ministry of Home Affairs, New Delhi. .. Respondents

(By Advocates: Mr. Shafik, MA for Respondent No.1 and 2

Mr. TPM Ibrahim Khan, SCGSC for Respondent No.3)

(4) O.A. No.~~859~~ 459 of 2006

1.Ajith Kumar, V.

S/o Apputty,

Police Constable B. No.314,

Police Station, Kavaratti,

Union Territory of Lakshadweep.

(2) B.K.Attakidavu,

S/o late Ibrahimkutty,

Police Constable B. No.283

Police Headquarters Kavaratti,

Union Territory of Lakshadweep.

(3) P.Ponkidavu,

S/o late KK Cheriyakoya,

Police Constable B. No.337

Police Station, Kavaratti,

Union Territory of Lakshadweep.

(4) K.P.Muraledharan,

Police Constable,

Police Headquarters Kavaratti,

Union Territory of Lakshadweep.

(5) K.K.Rafeeq Dhakkaria,

Police Constable,

Police Station, Kavaratti,

Union Territory of Lakshadweep. ..Applicants

(By advocates : Mr. MV Thampan)

-Versus-

1. The Superintendent of Police,

Union Territory of Lakshadweep, Kavaratti.

2. The Administrator,

Union Territory of Lakshadweep, Kavaratti.

3. Union of India,

represented by the Secretary,

Ministry of Home Affairs, New Delhi. .. Respondents

(By Advocates: Mr. Shafik, MA for Respondent No.1 and 2

Mr. TPM Ibrahim Khan, SCGSC for Respondent No.3)

The application having been heard on 6th July 2007, the Tribunal delivered the following :

ORDER

(By Mrs. SATHI NAIR, VICE CHAIRMAN)

The applicants, who are Police Constables under the 1st Respondent have filed these original applications praying for a declaration that they are entitled to be considered for promotion to the post of Assistant Sub Inspector (Wireless/ Radio Technician) on the basis of a test conducted in February 2004, without fixing any cut off marks and for a direction to prepare a select list containing five times the number of vacancies of ASI

(Wireless) and ASI (Radio Technicians) available and anticipated and to make promotion to the said post from the list of candidates attached as Annexure-A/4. Since the reliefs prayed for are identical in all these original applications, these were heard together and are disposed of by a common order.

2. Briefly, the facts in these cases can be narrated as under:

All the applicants are working in the rank of Police Constables in the Police Department under the Union Territory of Lakshadweep. They have the qualifications of SSLC with Science, Mathematics and English and most of them have higher qualifications as well. They are in service varying from 20 to 30 years and they are aged around 42 to 50 years. The applicants' case for promotion to the posts of Assistant Sub Inspector (Wireless) or Assistant Sub Inspector (Radio Technician) for which the Police Administration has issued special rules by Annexure-A/1 by Notification dated 13.10.1977. The Rules were further amended by Annexure-A/2 Notification dated 12.6.1978. By Annexure-A/2 the post was made a promotion post for Head Constables and Police Constables in the Department on the basis of seniority. Subsequently, the Administration again issued amendments by Notification dated 19.12.1984, Annexure -A/3. By this amendment, the posts of ASI (Wireless) were made a non-selection

post and the method of selection was prescribed by promotion, failing which by deputation. The selection will be on the basis of seniority from amongst the Head Constables and Police Constables by conducting a qualifying test of matriculation standard. The first such test was conducted in the year 1984 and thereafter the test was held only on 22.2.2004. The applicants have also participated in the test. According to the respondents, none of the candidates could secure the minimum pass mark of 33%. The grounds on which the challenge is built are; **(i)** that the cut off marks of 33% was fixed after conducting the test and there was no prescription or any cut off marks while inviting applications and the respondents declared that all the candidates have failed in the test and, therefore, they cannot be considered for promotion; **(ii)** that the 1st Respondent has issued a circular dated 29.8.2006, Annexure-A/5, fixing the selection test for the post of ASI (Wireless) on 15.9.2006, fixing the age limit between 20 and 30 years as on 22.2.2005. Being aggrieved by this circular, the applicants alongwith four others have jointly filed OA No.634/2006, in which Annexure-A/6 interim order has been issued by this Tribunal preventing the respondents from conducting the test in violation of the Recruitment Rules; **(iii)** that the respondents are keeping the posts vacant for many years denying the legitimate chances of promotion for policemen; and **(iv)** that the applicants have passed the

departmental test conducted for promotion to the post of ASIs in the normal channel, whereas they could not get better marks in the test conducted for ASI(Wireless and Radio Technicians) as the question were set following the CBSE syllabus and not of the SSLC Standard (Kerala Syllabus).

3. The following common reliefs have sought for in the Original applications:

(i) to issue a declaration that the applicants are entitled to be considered to the post of ASI (Wireless/Radio Technician) on the basis of the test conducted in February,2004 without fixing any cut off marks and also to declare that no cut off mark can be fixed when such cut of mark was not fixed before conducting the written test and especially when the method is by promotion on the basis of seniority as per the Recruitment Rules;

(ii) to issue a direction to the respondents to prepare a select list containing candidates at least 5 times the number of vacancies of ASI (Wireless) and ASI(Radio Technicians) available and anticipated on the basis of the test already conducted in February 2004; and

(iii) to direct the respondents to prepare a rank list for promotion to the post of ASI (wireless/Radio Technician), taking into account the mark list dated 1.4.2004 attached to Annexure-A/4 and the seniority and the

number of vacancies available and to make promotions after sending them for the requisite training including the applicants and other similarly situated Policemen.

4. The applicants have also filed Miscellaneous Applications for condonation of delay, ranging from 500 to 695 days, in filing the original applications, as the test was conducted in February 2004. The respondents have also filed objections to the Misc. Applications stating that the applicants have not explained the reasons for delay in filing the Original Applications and they have not submitted any representation before the Authority and have not exhausted the departmental channels, and as such the applications were not maintainable.

5.1. In the reply statement, the respondents, however without prejudice to the submissions, that the applications are premature and also barred by limitation have stated that the averments made therein are not factually correct. When the promotion test was conducted in 1984 by the 1st Respondent to fill up the vacancies of eight ASIs (Wireless) and two ASIs (Radio Technicians),16 candidates came out successful in the test and were considered by Departmental Promotion Committee (DPC) for promotion. As regards the cut off marks, it has been submitted that in the earlier test also the Department have not notified any cut off minimum percentage while inviting applications. However, 33% is the minimum

percentage fixed on the basis of the pass marks fixed for Class-X. The cut off marks need not be notified prior to the selection, since the Department adopted a general principle of 33% marks from the beginning. The relevant Recruitment Rules do not provide or prescribe any method in conducting the test, it is for the administration to prescribe the method to conduct the test. The applicants, who appeared in the test have failed to secure the minimum marks required for passing the test. Similarly, another test was proposed to be conducted in the year 2006 and the same had to be postponed on the basis of the interim order dated 13.9.2006 of this Tribunal passed in OA No.634/2006 (Annexure-A/6) filed by Sri P.I. Hamzakoya and 5 others. The respondents have also submitted that they are ready to go on with the selection process as per the Recruitment Rules, if so directed by this Tribunal.

5.2. The allegations that the questions set for the test were of higher standard than of matriculation is baseless as the ASI (Wireless) and ASI (Radio Technician) of the Department are being trained by the Kerala Police, BSF, CPRTI (DCPW) under the syllabus approved by Directorate of Coordination, Police Wireless, Ministry of Home Affairs, New Delhi. The Institute had circulated the guide lines for preparing the question papers with the view to select suitable candidates who could cope

up with the training standards of the Institutions. In fact, now a days, most of the organizations are selecting only persons with Degree or Diploma in Communication/Electronics in their Organization. This is highly essential in view of the present advances in satellite communication system and installation of sophisticated equipments in Police Communication Networks. It has been further averred that none of the applicants had secured the minimum marks in the test conducted in 2004. The 1st applicant in OA No.859/2006 secured only 21 ½% marks. The 2nd, 3rd, 4th and 5th applicants have secured 13%, 14 ½ %, 18% and 16% marks respectively. The applicants are seeking a back door entry. As regards the age limit, it it submitted that in the promotion test held in 2004 all metric passed Head Constables and Constables of the Department were allowed to participate in the test without prescribing the age limit. The non-stipulation of age limit may result in selection of HCs/PCs on the verge of their retirement also. Such persons would retire on superannuation within two to three years of their selection and even before. This has been done keeping the interest of the departmental candidates and without any mala-fide intention. It has been further stated that the Recruitment Rules were amended from time to time with a view to widen the promotional avenues for the Departmental candidates in view of their stagnation in one and the same ranks. There is no need to prescribe any cut off marks prior to selection as the process

and procedures to be adopted in the selection is in the complete domain of the Respondents. Since the relevant Recruitment Rule provides for a departmental test, it is only normal to set a minimum standard and the Respondents have done the same to protect the interest of all the participants although pre-notification has not been issued.

6. We have heard Mr. M.V. Satyanathan learned counsel for the applicants, Mr. Shafik M.A. Learned counsel for Respondents and 2 and Mr. V.A.Shaji, learned counsel for respondent No.3. First, we shall deal with the delay in filing the original applications. The applicants in OA No. 859/06 and others are claiming reliefs on the basis of Annexure-A/4 dated 1.4.2004. This OA was filed on 15.12.2006 which ought to have been filed before 1.4.2005 and there is a delay of 595 days. The only reason for delay in filing the application, mentioned by the applicants, is that the respondents have given a promise to them that they will be promoted, which contention has been stoutly denied by the respondents. The applicants also submitted that they have approached this Tribunal only after the Respondents proposed to conduct the test again on 15.9.2006 and some of the applicants filed OA No. 634/06 and the test was stayed. This explanation cannot be accepted and is not maintainable as the selection was held in the year 2004. The applicants amended the original reliefs sought

for by adding additional prayer for a direction to the Respondents to prepare a rank list for promotion to the post of ASI (Wireless/Radio Technician) taking into account the marks list dated 1.4.2004, which is evidently an after thought, after the proposed test to be held in 2006 had been stayed by this Tribunal in OA No. 634/2006. We are of the view that the applicants have approached this Tribunal after inordinate delay of more than 500 days and during these two years, they have also not approached the Authorities through any representation and not at all exhausted the normal channel for redress al of their grievances. On this ground itself, the Original Applications are liable to be dismissed.

7. Even assuming that the delay is condoned, on merit also, the applicants have not made out any case, as the Annexure-A/4, the select list on which they seek promotion, shows the poor and miserable standard of their performance in the test conducted by the Department. Lastly that the applicants have not secured the cut off minimum marks of 33% but the select list so prepared in the year shows that they have secured far less marks. For e.g., the 1st applicant in OA No.859/2006 secured only 21 ½% marks. The 2nd, 3rd, 4th and 5th applicants have secured 13%, 14 ½ %, 18% and 16% marks respectively. The contentions of the applicants that the list prepared in the year 2004 is to be treated as the select list and they be

promoted on the basis of the said list considering their seniority is not at all tenable in view of the provisions in the Recruitment Rules, which runs thus :-

"Col-12. Selection will be made on the basis of seniority from amongst the HC's/PC's who are matriculates or equivalent and qualify a test in Physics, Chemistry, Mathematics and English which will be of matric level and conducted by the Police Department. Relaxation in educational qualification in case of deserving candidates may be considered by the Administrator in case of candidates who are otherwise found suitable on the recommendation of the DPC. Selected candidates will have to undergo Wireless Operator's training and pass the examination. Promotion will be effective only after successful completion of training."

A bare reading of the above Rule makes it clear that the selection will be made on the basis of seniority from amongst the HC's/PC's who are matriculates ore 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 conduct 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 everyone 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 a promotion post in order to improve the standard in all spheres of functioning of the police organization 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 applicants' 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.

Dated the 6th July, 2007

(Dr.KBS Rajan)
MEMBER(JUDICIAL)

(Sathi Nair)
VICE CHAIRMAN

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