Central Administrative Tribunal
Ernakulam Bench

Date: 25-7-1990

Present

Hon'ble Shri SP Mukerji, Vice Chairman

&

Hon'ble Shri AV Haridasan, Judicial Member

Original Application No.300/89,
Original Application No.311/89 &
Original Application No.466/89

OA-300/89

PP Sreedhara Kurup - Applicant

V.

1. Union of India represented by the Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
2. The Administrator, Union Territory of Lakshadweep, Kavaratti.
3. The Superintendent of Police, U.T. of Lakshadweep, Kavaratti.
4. M.P.Nallakoya, Sub Inspector of Police, Kavaratti.
5. Joseph James, Sub Inspector of Police, Office of the Administrator, U.T. of Lakshadweep, Willingdon Island, Cochin.
6. M.C.Kidave, Circle Inspector of Police, (A.C.I.O.1) Agatti, U.T. of Lakshadweep.
7. K Somasekharan Nair, Inspector of Police, CBI, SRM Road, Cochin-18. - Respondents

M/s PK Aboobacker, PMM Najeebkhan and Joy George - Counsel for the applicant

Mr PV Madhavan Nambiar - Counsel for the respondents 1-3

M/s Sukumaran & Usha - Counsel for the respondents 4&5

M/s MK Damodaran & CT Ravikumar - Counsel for the respondents 6&7

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OA-311/89

K Narayanan - Applicant

V.

1. The Administrator,
   U.T. of Lakshadweep,
   Kavaratti.
2. The Superintendent of Police,
   U.T. of Lakshadweep,
   Kavaratti.
3. M.C.Kidave,
   Circle Inspector of Police,
   (A.C.I.O.1)
   U.T. of Lakshadweep,
   Agatti.
4. K Somasekharan Nair,
   Inspector of Police,
   CBI, SRM Road, Cochin-18.
5. MP Nallakoya,
   Circle Inspector of Police,
   U.T. of Lakshadweep,
   Kavaratti.
6. Joseph James,
   Circle Inspector of Police,
   Special Branch,
   U.T. of Lakshadweep,
   Kavaratti. - Respondents

M/s MVS Nampoothiri & PK Aboobacker - Counsel for the applicant

Mr PVM Nambiar - Counsel for the respondents 1&2

M/s Sukumaran & Usha - Counsel for the respondents 5&6

M/s MK Damodaran & Anilkumar - Counsel for the respondents 3&4

OA-466/89

KC Balakrishnan Nair - Applicant

V.

1. Union of India represented by
   Secretary to Government,
   Ministry of Home Affairs,
   New Delhi.
2. The Administrator,
   U.T. of Lakshadweep,
   Kavaratti. - Respondents

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3. The Superintendent of Police,
U.T. of Lakshadweep,
Kavaratti.

4. MP Nallakoya,
Circle Inspector of Police,
U.T. of Lakshadweep,
Kavaratti.

5. Joseph James,
Circle Inspector of Police,
Special Branch,
Kavaratti. - Respondents

M/s MR Rajendran Nair,
PV Asha & Therian Joseph - Counsel for the applicant

Mr PV Madhavan Nambiar - Counsel for the respondents 1-3

M/s Sukumaran & Usha - Counsel for the respondent-4

JUDGEMENT

(Shri AV Haridasan, Judicial Member)

All these three applications are pertaining to the inter se seniority and the revision of seniority of the Police Officers in the cadre of Sub Inspectors working under the Lakshadweep Administration. Shri PP Sreedhara Kurup, the applicant in OA-300/89, Shri K Narayanan, the applicant in OA-311/89 and Shri KC Balakrishnan Nair, the applicant in OA-466/89 are officers promoted to the cadre of Sub Inspectors while they were working as Head Constables. The first respondent in OA-300 and OA-466 of 89 is the Union of India represented by Secretary to the Ministry of Home Affairs. The respondents 2&3 in these applications are the respondents 1&2 in OA-311/89. S/Shri MP Nallakoya and Joseph James/who are respondents 4&5 in OA-300/89 are respondents 5&6

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in OA-311/89 and respondents 4&5 in OA-466/89. S/Shri MC Kidave and K Somasekharan Nair who are respondents 6&7 in OA-300/89 are respondents 3&4 respectively in OA-311/89. They are not parties to OA-466/89. S/Shri Sreedhara Kurup, Narayanan and Balakrishnan who were applicants in OA-300, 311 and 466 of 1989 respectively were promoted to the post of Sub Inspectors while they were working as Head Constables, while S/Shri MC Kidave, K Somasekharan Nair, MP Nallakoya and Joseph James were persons directly recruited as Sub Inspectors of Police under the Lakshadweep Administration. Since all these applications relate to the inter se seniority between the applicants who are promotees to the cadre of Sub Inspectors of Police and S/Shri MC Kidave, K Somasekharan Nair, Nallakoya and Joseph James who were direct recruitees in the cadre of Sub Inspectors of Police and since the impugned orders are common, all these three applications were jointly heard and are being disposed of by this common order. The material facts necessary for the disposal of these applications can be briefly stated as follows.

2. The applicants in these three cases were promoted as Sub Inspectors of Police on ad-hoc basis by proceedings of the Superintendent of Police, U.T. of Lakshadweep, Kavaratti dated 31.1.1976. S/Shri MC Kidave and K Somasekharan Nair were appointed as Sub Inspectors Trainees by the proceedings of this Administrator, U.T. Lakshadweep dated 24.10.1973 at Annexure-R4(a) in OA-311/89, and were appointed as Sub Inspectors on completion of training on 1.4.1975 and S/Shri Nallakoya and Joseph James were recruited as Sub Inspector Trainees by

proceedings of the Superintendent of Police, Lakshadweep on 2.7.1976. After completion of training, Shri Nallakoya joined as Sub Inspector of Police on 25.9.1978 and Shri Joseph James joined as Sub Inspector on 2.9.1978. The provisional seniority list of Sub Inspectors working under the U.T. of Lakshadweep promoted/recruited after 1.4.1975 and upto 9.3.1979 was first published by circular dated 28.11.1979. As this was not finalised, a further provisional seniority list was published on 8.1.1985, a copy of this is at Annexure-IV in OA-466/89. Shri K Narayanan, the applicant in OA-311/89 was placed in Sl.No.4, Shri KC Balakrishnan,Nair, the applicant in OA-466/89 was placed at Sl. No.5, Shri PP Sreedhara Kurup, the applicant in OA-300/89 was placed at No.7. S/Shri MC Kidave and K Somasekharan Nair who were respondents 6&7 respectively in OA-300/89 and 3&4 in OA-311/89 were placed at Sl. No.8&10 and Shri MP Nallakoya and Joseph James who were respondents 4&5 respectively in OA-466/89 and OA-300/89, 5&6 in OA-311/89 were placed at Sl. No.12 and 14 respectively. This provisional seniority list was finalised on 24.12.1986 on which date a final seniority list was issued along with an office memorandum. Annexure-C & D in OA-311/89 are the copies of the office memorandum and the final seniority list. The same is in Annexure-V in OA-466/89. The placement of the officers concerned in these cases in the final seniority list dated 24.12.1986 was the same as that in the provisional list earlier prepared Annexure-IV in OA-466/89. Subsequently,

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the Superintendent of Police, U.T. of Lakshadweeps by office memorandum dated 3.6.1987(Annexure-VI in OA-466/89), Further, revised the seniority list and prepared a fresh provisional seniority list cancelling the final seniority list dated 24.12.1986. The officers were given 15 days time to raise objections to the proposed revisional seniority. As per this provisional seniority list, Shri K Narayanan, the applicant in OA-311/89 was pushed down to Sl.No.4 to 6, Shri KC Balakrishnan Nair, the applicant in OA-466/89 was pushed down from Sl.No.5 to 7. S/Shri MC Kidave and K Soma-sekharan Nair were given at Sl.No.4&5 instead of 8 & 10 in the seniority list dated 24.12.1986. Shri Sreedharan Kurup, the applicant in OA-300/89 was pushed down to Sl.No.7 to 9, While S/Shri MP Nallakoya and Joseph James were placed at Sl.No.12 & 13. This provisional seniority list was finalised by office memorandum of the Superintendent of Police dated 31.8.1987 without any change in the ranking from what was proposed in Annexure-VI. The Annexure-VII in OA-466/89 is the copy of the final senioirity list dated 31.8.1987. There-after there was no change for about one year and 9 months in the seniority list. But on 5.5.1989, the Superintendent of Police, U.T. of Lakshadweep issued an office memodandum enclosing a provisional revised seniority list of the Sub Inspectors. This office memorandum reads as follows:

> "Final seniority list of SIs was published vide this office memorandum referred and communicated to all concerned. Later S/Shri MP Nallakoya and Joseh James had appealed against the final seniority list before the Administrator. Both of them represented that the

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period of their training should be counted for seniority purposes. Again they raised the point that all the promotees ranked above them had not successfully completed the 6 months SIs training as prescribed in the R.R. then in force.

After examining all the aspects I am directed to revise and publish the final seniority list of SIs. Revised final seniority list of SIs is enclosed. All the officers are requested to acknowledge the receipt."

Though in the seniority list attached to this office memoraddum the heading is provisional seniority list of Sub Inspectors of Police in Lakshadweep(revised), no objections were called for from the officers affected by the revision. Further, the covering letter makes it clear that the list enclosed was final seniority list. Obviously, before making this revision on the appeal, S/Shri MP Nallakoya and Joseph James by the order dated 5.5.1989 no notice has been given to the officers who were affected by the change in the seniority position. Aggrieved by these revision in the seniority, the applicants have filed the three applications. The applicant in OA-300/89 has challenged the revised seniority list dated 31.8.1987 in which S/Shri MC Kidave and K Somasekharan Nair were placed above him. This revision was made purportedly on the basis of the Order No.35014/2/80-Estt(D) dated 7.2.1986 of the Department of Personnel & Training. It is alleged in the application that as per Clause (7) of the above memorandum, the orders would take effect from 1st March, 1986 since the provisional seniority list of8.1.1985 was finalised before that date, according to that clause, the revision is not called for. The proposal to revise the seniority list of 31.8.1987 and to place S/Shri Nallakoya and Joseph James above the applicant

and the steps to promote them as Inspector of Police are also challenged. The applicant has prayed that the revised seniority list of 31.8.1987 may be declared invalid and that he may be directed to be promoted as Circle Inspector and place above the driectly recruited Sub Inspectors. The applicant in OA-311/89 has also prayed for similar reliefs. The applicant in OA-466/89 has challenged the validity of cancellation ofthe seniority list dated 31.8.1987 by order dated 5.5.1989 at Annexure-I in OA-466/89 and has prayed that his seniority above the directly recruited Sub Inspectors as in the seniority list dated 31.8.1987 may be kept in tact and that the authorities may be directed to frame proper seniority list, in accordance with law, after giving him opportunity to make his representation. The applicant in OA-300/89 claimed promotion on the basis of his seniority in the seniority list dated 8.1.1985 and applicants in OAs-311 & 466 of 1989 pray that they may not be reverted and that their seniority in accordance with the earlier final seniority list may be retained.

3. The Union of India, Administrator, U.T. of Lakshadweep and Superintendent of Police have filed a reply statement in all these applications. The directly recruited Sub Inspectors who are parties to these applications have also filed reply statements. The revision of seniority by the seniority list dated 31.8.1987 has been justified on the ground that this was necessitated by virtue of the office memorandum of the

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Department of Personnel and Training dated 7.2.1986 and that this revision was made after inviting objections from the parties concerned. The impugned order dated 5.5.1989 and the seniority list attached thereto has been sought to be justified on the ground that it was necessitated on the basis of the appeal filed by S/Shri MP Nallakoya and Joseph James stating that the period of their training should be counted for their seniority and also because the promotees Sub Inspectors who had been ranked above them have not successfully completed the 6th months S.Is training as prescribed by the Recruitment Rules in force.

4. We have heard the arguments of the learned counsel on either side and have also perused the documents produced. The claim of the applicant in OA-300/89 that the seniority list dated 8.1.1985 should not be altered cannot stand for the reason that it isonly a provisional seniority list. After hearing objections on this provisional seniority list a final seniority list was published on 24.12.1986 a copy of which is available at Annexure-V in OA-466/89. But this seniority list was further revised and a final seniority list was issued on 31.8.1987(Annexure-VII in OA-466/89) dated 3.6.1987 Before finalising this list, a provisional seniority/list proposing revision ~~xxxxxxxxxxxxx~~ was circulated among the officers concerned(Annexure-VI). The reason for the revision has been clearly stated. The fourth reserved point had been

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dereserved finding that the reservation points were not properly observed and further change was effected in view of the guidelines prescribed in Department of Personnel and Training O.M.No.35014/2/80-Estt(D) dated 7.2.1986 wherein it is specified that to the extent, the promotees are not available the direct recruits will be bunched together at the bottom of seniority below the last position and that the unfilled promotion quota should be however carried forward and added to the extent of promotion vacancies to the next year. The argument of the learned counsel for the applicant is that this O.M. dated 7.2.1986 saves seniority determined prior to 1.3.1986 as stated in Clause 7 of the O.M. and that therefore as the seniority list of 8.1.1985 had already been finalised before that date, it was not necessary to reopen that list and to prepare a fresh seniority list on 31.8.1987. This argument cannot be accepted because the seniority list dated 8.1.1985 was only a provisional seniority list and ~~as~~ this was finalised on on 24.12.1986 by Annexure-V in OA-466/89. ~~So~~ Since the seniority in Annexure-V of OA 466/89 was not determined prior to 1.3.1986 it had to be revised in terms of the O.M. and it has been rightly done after giving notice to the parties. Therefore, regarding the seniority list dated 31.8.1987 at Annexure-VII in OA 466/89, the grievance of the applicant has no legal basis. Now coming to the office memorandum dated 5.5.1989 and the seniority list attached thereto (Annexure-I) in OA 466/89 it is seen that the revision was made on the

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basis of xxxx appeals filed by S/Shri Nallakoya and Joseph James against the final seniority list dated 31.8.1987 on the ground that the period of their training had to be added to their service for reckoning seniority and that as the promotee Sub Inspectors have not undergone the training prescribed in the Recruitment Rules their names should not be placed in the seniority list at all. Before making this revision, no notice was given to the officers affected namely, the applicants in these three cases and they were not given an opportunity to explain their stand as to whether they had undergone the training or whether their not being sent for training can affect the seniority or not. A seniority list which was finalised as early as on 31.8.1987 cannot be cancelled and revised after a lapse of one year and 9 months without giving any notice to the persons affected. In OA-466/89 Annexure-II order dated 9.5.1989 promoting S/Shri Nallakoya and Joseph James on the basis of the revised seniority list, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx has been challenged. The applicants in all these cases pray that inasmuch as their seniority has been altered without notice to them and without giving them an opportunity to make representation against such alteration, the revision may be quashed. On a careful scrutiny of the entire records available in these cases, we find that the seniority list of the Sub Inspectors including the applicants and the directly recruited S.Is in these cases have been finalised properly on 31.8.1987 by Annexure- VII

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in OA 466/89 and that the office memorandum dated 5.5.1989 and the seniority list attached thereto at Annexure-1 in OA 466/89 cannot be sustained for the reason that no notice has been given to the affected parties before the revision.

5. In the result, the applications are disposed of with the following orders:

i) The seniority list of promotee/directly recruited Sub-Inspectors in the Union Territory of Lakshadweep, which is valid and binding on the officers for the time being in force is the one dated 31.8.1987 at Annexure-VIII in OA 466/89.

ii) The office memorandum of the Superintendent of Police of Lakshadweep dated 5.5.1989 F.No.1/4/89-Estt. POL/281 and the seniority list attached thereto, the impugned order in OA 466/89 are quashed and set aside, since they have been made without giving the parties affected by the change an opportunity to represent their case.

iii) It is open to the Administrator and the Superintendent of Police, Union Territory of Lakshadweep to revise the seniority list, Annexure-VII in OA 466/89 for any valid reason; but it should be done only after giving the officers concerned due notice and opportunity to make representations explaining their stand.

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iv) The promotions to the post of Inspector of Police should be made strictly on the basis of the seniority list dated 31.8.1987, Annexure-VII in OA 466/89 until this seniority list is properly revised after giving due notice and opportunity to the officers concerned.

v) As the applicant in OA 300/89 is senior to respondents 6 and 7 in that case as per the seniority list dated 31.8.1987, the respondents 1 to 3 in this case are directed to consider the case of the applicant for promotion as Inspector of Police with effect from the date on which the 6th respondent was promoted as Inspector and to promote him to the post of Inspector of Police with effect from that date, if he is otherwise found suitable, giving him seniority over the 6th respondent, if necessary by reverting the junior most Inspector of Police. This should be done within a period of one month from the date of communication of this order.

There is no order as to costs. A copy of the order should be placed in the file of the each case.

25/7/90

(A.V.HARIDASAN)
JUDICIAL MEMBER

25.7.90

(S.P.MUKERJI)
VICE CHAIRMAN

25.7.1990

trs.