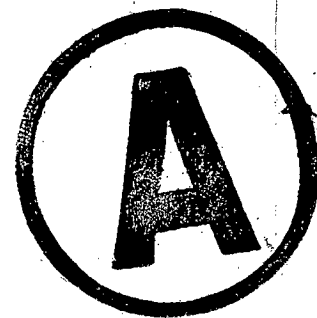


CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH



Original Application No. 59 of 2009
Original Application No. 70 of 2009
Original Application No. 92 of 2009
Original Application No. 355 of 2009

this the 3rd day of January, 2011

CORAM:

Hon'ble Ms. K. Noorjehan, Administrative Member
Hon'ble Dr. K.B. Suresh, Judicial Member

1. **Original Application No. 59 of 2009 -**

1. Saleem K.K., S/o. Late N.C. Hssainar,
Kallakkeekkal House, Amini Island, UT of Lakshadweep.
2. Hussain Ali A., S/o. Yousuf Achada, Achammada House,
Androth Island, UT of Lakshadweep.

Applicants

(By Advocate – Mr. M.R. Hariraj)

V e r s u s

1. The Secretary, Ministry of Home Affairs,
Government of India, New Delhi.
2. Inspector General of Police, (The Administrator, UT of Lakshadweep),
India Reserve Battalion, UT of Lakshadweep, Kavarathi.
3. The Commandant, India Reserve Battalion, Headquarters,
Kavarathi, UT of Lakshadweep.
4. Ram Ayodhya Singh, Sub Inspector, IRBN, Kavarathi, UT of Lakshadweep.
5. Tandel Ketan Kumar, Sub Inspector, IRBN, Minikoy, UT of Lakshadweep.
6. Damania Vinod Kumar, Sub Inspector, IRBN, Kavarathi, UT of
Lakshadweep.
7. Mahavir Singh Rathod, Sub Inspector, IRBN, Agathi, UT of Lakshadweep.
8. Jamnadas Sikotaria, Sub Inspector, Rear Head Quarters, IRBN, Silvassa,
UT of DNH.
9. Digendrasinh Solanki, Sub Inspector, IRBN, Kavarathi, UT of
Lakshadweep.

10. Vaja Bharat Kumar, Sub Inspector, Rear Head quarters, IRBN, Silvassa UT of DNH.
11. Gavit Mahesh C, Sub Inspector, IRBN Camp, UT of Daman.
12. Rohit Anil Kumar, Sub Inspector, IRBN Camp, UT of Diu.

..... Respondents

[By Advocate – Mr. Sunil Jacob Jose, SCGSC (R1),
Mr. S. Radhakrishanan (R2&3) &
Mr. P.V. Mohanan (R4, 6-8)]

2. Original Application No. 70 of 2009 -

Sayed Fathahudheen T., S/o. P.S.K. Thangal, Koodat House, androth, UT of Lakshadweep.

..... Applicant

(By Advocate – Mr. M.R. Hariraj)

V e r s u s

1. The Secretary, Ministry of Home Affairs, Government of India, New Delhi.
2. The Administrator and IGP, India Reserve Battalion, UT of Lakshadweep, Kavarathi.
3. The Commandant, India Reserve Battalion, Headquarters, Kavarathi, UT of Lakshadweep.
4. Nitin Narayan, Sub Inspector (Wireless), IRBn, Headquarters, Kavarathi, UT of Lakshadweep.

..... Respondents

[By Advocate – Mr. S. Radhakrishanan (R2&3) &
Mr. P.V. Mohanan (R4)]

3. Original Application No. 92 of 2009 -

Thasim Ubaidulla S.M., S/o. K. Nallakoya Thangal, Pattakal House, Andrott Island, UT of Lakshadweep.

..... Applicant

(By Advocate – Mr. P. Sanjay & Muhammed Shafi. M)

V e r s u s

1. The Secretary, Ministry of Home Affairs, Government of India, New Delhi.
2. The Inspector General of Police (The Administrator, UT of Lakshadweep), India Reserve Battalion, UT of Lakshadweep, Kavarathi.

3. The Commandant, India Reserve Battalion, Headquarters, Kavaraathi, UT of Lakshadweep.
4. Sanjay Kumar, Constable (Wireless), Rear Head Quarters, IRBN, Silvassa UT of DNH.
5. Dhiraj Kumar, Constable (Wireless), Rear Head Quarters, IRBN, Silvassa UT of DNH.
6. Laxman S Vartha, Constable (Wireless), IRBN Camp Minicoy, UT of Lakshadweep.
7. Patil Ishwar H, Constable (Wireless) IRBN Camp, Chetelath Island, UT of Lakshadweep.
8. Indramani, Constable (Wireless), Rear Head Quarters, IRBN, Silvassa UT of DNH.
9. Akaesh M. Rajawath Constable (Wireless), Rear Head quarters, IRBN, Silvassa UT of DNH.
10. Maherswar Rao Constable (Wireless), Rear Head quarters, IRBN, Silvassa UT of DNH.
11. Raj Kumar Singh Constable (Wireless), Rear Head Quarters, IRBN, Silvassa UT of DNH.
12. Mukesh Kumar Mishra Constable (Wireless), IRBN Camp, Kadamat Island, UT of Lakshadweep.
13. Nanji H. Bamanian, Constable (Wireless), IRBN Camp, UT of Diu.
14. Sunil Dutta Chouhan, Constable (Wireless), IRBN Camp Minicoy, UT of Lakshadweep.
15. Sunil Kumar Pande, Constable (Wireless), Rear Head quarters, IRBN, Silvassa UT of DNH.
16. Harijan Lalabhai Constable (Wireless), IRBN Camp, Kiltan Island, UT of Lakshadweep. Respondents

[By Advocate – Mr. Sunil Jacob Jose, SCGSC (R1) &
Mr. S. Radhakrishanan (R2&3)]

4. **Original Application No. 355 of 2009 -**

1. Muhammed Najeeb M, S/o. T.P. Syed Koya, aged 37 years, Mathil House, Androth, UT of Lakshadweep.
2. Muhammed Sulaiman A. Aged 33 years, S/o Hamzakova N.C., Asharoda House, Amini, UT of Lakshadweep.

3. Hidayathulla Khan P., Aged 36 years, S/o Hameed T.,
Puthillam House, Amini, UT of Lakshadweep. **Applicants**

(By Advocate – Mr. Muhammed Shafi. M)

V e r s u s

1. The Secretary, Ministry of Home Affairs,
Government of India, New Delhi.
2. The Inspector General of Police
(The Administrator, UT of Lakshadweep),
India Reserve Battalion, UT of Lakshadweep, Kavarathi.
3. The Commandant, India Reserve Battalion, Headquarters,
Kavarathi, UT of Lakshadweep.
4. Khanjodia Abjubhai, Rear Head Quarters, IRBN, Silvassa UT of DNH
5. Jayantilal Ramji Solanki, Rear Head Quarters, IRBN, Silvassa UT of DNH
6. Jamunadas N.Vyshia, IRBN, Kavarathi, UT of Lakshadweep
7. Vinod Virji Solanki, Read Head Quarters, IRBN, Silvassa UT of DNH
8. Prakash D.Patel, IRBN, Kavarathi, UT of Lakshadweep
9. Pravin Kumar S.Bamaniya, Rear Head quarters, IRBN, Silvassa UT of DNH
10. Sathiya Ravilabhai K, Rear Head Quarters, IRBN, Silvassa UT of DNH
11. Lalit Kumar S.Kaberia, IRBN Camp, UT of Daman
12. Gopal Narayan Vaja, IRBN, Kavarathi, UT of Lakshadweep
13. Amrutlal T.Wadher, IRBN Camp, UT of Daman
14. Keni Bharat Kumar D. IRBN, Agathi, UT of Lakshadweep
15. Pankaj Gopal Jadav, Rear Head Quarters, IRBN, Silvassa UT of DNH
16. Deyalal B, Wadher, IRBN Camp, UT of Daman
17. Patel Vikas R, IRBN Camp, UT of Daman
18. Chandrakant R.Solanki, Rear Head Quarters, IRBN, Silvassa, UT of DNH
19. Krishna Savji Pagi, IRBN Camp, UT of Diu
20. Vijay V.Mangela, Rear Head quarters, IRBN, Silvassa UT of DNH

21. Sandeep S.Salian, IRBN Office, Willington Island, Kochi
22. Nousir A Vaid, Rear Head quarters, IRBN, Silvassa ut of DNH
23. Narendra B.Solanki, Read Head Quarters, IRBN, Silvassa UT of DNH
24. Sharat B.Solanki, Rear Head quarters, IRBN, Silvassa UT of DNH
25. Mohanlal nathu makwana, Rear Head quarters, IRBN, Silvassa UT of DNH
26. Rajendra P Makwana, IRBN, Kavarathi, UT of Lakshadweep
27. Jayanti Rama Solanki, Rear Head quarters, IRBN, Silvassa UT of DNH
28. Dharmendra N Chouhan, Rear Head quarters, IRBN, Silvassa UT of DNH
29. Patara Chaita Lakma, IRBN, Minikoy, UT of Lakshadweep
30. Arjun Navsar Gorat, Rear Head quarters, IRBN, Silvassa UT of DNH
31. Bij Laxi Ramji, Rear Head quarters, IRBN, Silvassa UT of DNH
32. Girish Kumar D Damania, IRBN Camp, UT of Daman
33. Ramesh Ramji Jadav, IRBN, Agathi, UT of Lakshadweep
34. Ramesh Deva Solanki, Rear Head quarters, IRBN, Silvassa UT of DNH
35. Dhodiya Naresh I, Rear Head quarters, IRBN, Silvassa UT of DNH
36. Ramesh R Chudasma, IRBN Camp, UT of Diu
37. Suresh B Damodiya, Read Head quarters, IRBN, Silvassa UT of DNH
38. Dharmendra Kr R Jetwa, Rear Head Quarters, IRBN, Silvassa UT of DNH
39. Dharmendra P Jetwa, Rear Head Quarters, IRBN, Silvassa UT of DNH.
40. Naval Kishore Pandey, Rear Head Quarters, IRBN, Silvassa UT of DNH.
41. Janathiya Suresh Ramji, Rear Head quarters, IRBN, Silvassa UT of DNH.
42. Lavji Wadher, Rear Headquarters, IRBN, Silvassa, UT of DNH.
43. Chandu B Halpathi, IRBN Camp, UT of Daman.
44. Chandrakant B Chouhan, Rear Head quarters, IRBN, Silvassa UT of DNH.
45. Jairam G Nadge, IRBN, Kavarathi, UT of Lakshadweep.
46. Ashok B Patel, IRBN, Kavarathi, UT of Lakshadweep.

47. Kamlesh I Bandari, IRBN Camp, UT of Diu.
48. Paresh Sidi Chouhan, IRBN, Agathi, UT of Lakshadweep.
49. Ravindra N Mangela, Rear Head quarters, IRBN, Silvassa UT of DNH.
50. Ganpat T Bhoya, Rear Head Quarters, IRBN, Silvassa, UT of DNH.
51. Ashwin D Choudhari, Rear Head quarters, IRBN, Silvassa, UT of DNH.
52. Ali Hussainbhai Kuraishi, IRBN, Androth, UT of Lakshadweep.
53. Kharpadi Dasu L, IRBN Camp, UT of Diu.
54. Altaph Satar Mansoori, IRBN, Kavarathi, UT of Lakshadweep.
55. Mahesh Jiva Bariya, IRBN Camp, UT of Diu.
56. Halpathi Rajubhai B, IRBN Camp, UT of Diu.
57. Vartha Kantilal Biku, Rear Head quarters, IRBN, Silvassa UT of DNH.
58. Nagin Nathu Makwana, IRBN, Kavarathi, UT of Lakshadweep.
59. Nadge Laxi Benya, Rear Head quarters, IRBN, Silvassa, UT of DNH.
60. Premji Nathu Sikotaria, IRBN Camp, UT of Diu.
61. Ramachandra P Halpati, IRBN Camp, UT of Daman.
62. Salim Ahmed Chouhan, IRBN Camp, UT of Diu.
63. Padvi Dilip Bibal, IRBN, Kavarathi, UT of Lakshadweep.
64. Jadhav Bhavubahi J, IRBN, Kavarathi, UT of Lakshadweep.
65. Anil Kumar H Marge, IRBN, Kavarathi, UT of Lakshadweep.
66. Musthaq Ismail Siddi, IRBN Camp, UT of Diu.
67. Janathiya Babu Lahanubhai, IRBN, Kavarathi, UT of Lakshadweep.
68. Aja Teja Makwana, IRBN, Kavarathi, UT of Lakshadweep.
69. Prakash Kr. S. Jadav, IRBN, Kavarathi, UT of Lakshadweep.
70. Jadav Laxi Raghu, IRBN Camp, UT of Diu.
71. Sandeep L. Rai, Rear Head Quarters, IRBN, Silvassa, UT of DNH.
72. Kurkutia Gopal, IRBN Camp, UT of Diu.

73. Babu Ladkar Padkar, IRBN, Kavarathi, UT of Lakshadweep.
74. Bharat Kr. S. Balia, IRBN, Kavarathi, UT of Lakshadweep.
75. Suresh B Mangela, IRBN Camp, UT of Daman.
76. Kishore R Mahajan, Rear Head Quarters, IRBN, Silvassa UT of DNH.
77. Raut Laxubhai J, IRBN Camp, UT of Diu.
78. Sawar Ishwar Arjun, Rear Head quarters, IRBN, Silvassa UT of DNH.
79. Wagmare Ramesh D, Rear Head quarters, IRBN, Silvassa UT of DNH.
80. Dhansuk R Patel, Rear Head quarters, IRBN, Silvassa UT of DNH.
81. Varli Suresh Somabhai, IRBN, Kavarathi, UT of Lakshadweep.
82. Varthabahi Dhakalbhai M, Rear Head Quarters, IRBN, Silvassa UT of DNH.
83. Patel Deepakkumar S, IRBN, Kavarathi, UT of Lakshadweep.
84. Kewra Vasanth Chaita, Rear Head quarters, IRBN, Silvassa UT of DNH.
85. Mahala Dhakal Babloo, IRBN, Minikoy, UT of Lakshadweep.
86. Suresh R Ghatal, Rear Head Quarters, IRBN, Silvassa UT of DNH.
87. Bhoya Gajubhai L, IRBN, Kavarathi, UT of Lakshadweep.
88. Mishal Ashubhai D, Rear Head Quarters, IRBN, Silvassa UT of DNH.
89. Rathod Surendrakumar G, IRBN, Kochi, Kerala.
90. Chandrakant K. Solanki, Rear Head quarters, IRBN, Silvassa UT of DNH.
91. Valvi Lakubhai J, IRBN, Kavarathi, UT of Lakshadweep.
92. Patel Harishbhai S, Rear Head Quarters, IRBN, Silvassa UT of DNH.
93. Janiya Devram Bhoya, IRBN, Amini, UT of Lakshadweep.
94. Baban Laxi Gavitt, Rear Head Quarters, IRBN, Silvassa UT of DNH.
95. Siman S Rare, IRBN Camp, UT of Daman.
96. Mohankar Ratilal, Rear Head Quarters, IRBN, Silvassa, UT of DNH.
97. Patel Bharat Kumar M, IRBN Camp, UT of Diu.
98. Mahesh R. Patel, IRBN Camp, UT of Daman.

99. Mahala Jitu Ganda, Rear Head quarters, IRBN, Silvassa UT of DNH.
100. Masia Prakash Duming, IRBN, Kavarathi, UT of Lakshadweep.
101. Patel Thakurbhai Shankar, IRBN Camp, UT of Diu.
102. Laxibhai Barkubhai S Mahala, Rear Head quarters, IRBN, Silvassa UT of DNH.
103. Dinesh B Rohit, IRBN, Kavarathi, UT of Lakshadweep.
104. Bhoya Ishwarbhai S, Rear Head Quarters, IRBN, Silvassa UT of DNH.
105. Navjiya Manji Chimda, IRBN, Kavarathi, UT of Lakshadweep.
106. Suresh S Gangode, IRBN, Kavarathi, UT of Lakshadweep.
107. Thakurbhai L Mahala, IRBN Camp, UT of Daman.
108. Kurkutia Dilipbhai Babanbhai, Rear Head quarters, IRBN, Silvassa, UT of DNH.
109. Kulat Devram L, IRBN Camp, UT of Diu.
110. Sunil Ramanbhai Patel, IRBN Camp, UT of Diu.
111. Sanjaykumar B Solanki, IRBN, Kavarathi, UT of Lakshadweep.
112. Karpas Ashokbhai Ramjibhai, IRBN, Kavarathi, UT of Lakshadweep.
113. Prakashkumar Arjunbhai Patel, IRBN, Kavarathi, UT of Lakshadweep.
114. Kharpadia Kasmiabhai, Rear Head quarters, IRBN, Silvassa, UT of DNH.
115. Sravan M Chimda, Rear Head Quarters, IRBN, Silvassa UT of DNH.
116. Mahesh K Throat, Rear Head Quarters, IRBN, Silvassa UT of DNH.
117. Natwar Lal Vala, Rear Head Quarters, IRBN, Silvassa UT of DNH.
118. Nanji Soma Vala, Rear Head quarters, IRBN,
Silvassa UT of DNH.

..... Respondents

**[By Advocate – Mr. S. Radhakrishanan (R2&3) &
Mr. P.V. Mohanan for some party respondents]**

These applications having been heard on 26.10.2010, the Tribunal on

3.1.2011 delivered the following:

These Applications having been heard on 26.10.2010, the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

As the facts in all these four Applications are similar and the legal issues raised are the same, these Applications were heard together and are being disposed of by this common order. The facts in brief in each OA is as given below.

59/09

2 The applicants were appointed as Sub Inspectors (Executive) in the IR Battalion Lakshadweep, Daman, Diu and Dadra & Nagar Haveli on 18.10.1999. As per the provisional seniority list published on 2.6.2008, the 1st applicant was placed at Sl. No. 1 and 2nd applicants at Sl. No. 4 in the list. However, in the final seniority list published as on 16.1.2009, they were placed at Sl. No. 7 and 12 respectively while the respondents 4 to 10 who were recruited on a subsequent date are placed above them. The seniority list was prepared on the basis of marks obtained in the examination and test. The applicants are challenging the fixation of seniority on the ground that the examinations were conducted by different bodies on different dates at different stations by using different question papers, in different medium, and a few candidates from UT of Daman, Diu & Dadra and Nagar Haveli were awarded bonus marks while the candidates from UT of Lakshadweep were not given any such bonus marks, the applicants and other aggrieved were not even heard before finalising the seniority list, persons appointed on the basis of an earlier selection should have been placed senior, the representations submitted by the

applicants were not considered, and the seniority list adversely affect their promotional prospects.

3 The respondents 2 & 3 and the respondents 4, 6 to 8 filed separate reply statements.

4 The respondents 2 & 3 in their reply statement submitted that the recruitment of all ranks of India Reserve Battalion had to be made from three Union Territories of Lakshadweep, Daman & Diu and Dadra and Nagar Haveli (Annexure R-2(b)). Keeping in view the geographical distance between these three UTs, it was not feasible to conduct the examination at one place. The recruitment was done in a phased manner. However, due to administrative reason the dates for recruitment were rescheduled for the month of May, 1999. They have admitted that the test was conducted at the three UTs at different dates. They stated that the provisional seniority list was circulated and objections invited on 2.6.2008. After considering the objections they decided to fix the seniority on the basis of merit. They stated that the applicants have not raised any objection at the relevant time. They submitted that bonus marks were granted to athletes, sportsmen and NCC certificate holders (Annexure R-2)

5 The respondents 4, , 6 to 8 in their reply stated that 50% of the personnel will be from UT of Lakshadweep and 50% from UTs of Daman and Diu and U.T. Of Dadra and Nagar Haveli. They submitted that the recruitment of all Sub Inspectors was held in one phase and further the the party respondents filed representations seeking review of the provisional seniority list in accordance with the merit list. They further contended that the seniority list is prepared on the

basis of law declared by the Apex Court in P.Sreenivas Vs .M. Rahakrishan Moorthy (2004 (2) SCC 459). They further contended that bonus marks were given to athletes, sportsmen and NCC certificate holders, as per the rules on the subject.

6 The applicants have filed rejoinder reiterating that the recruitment was not done in a single selection process.

O.A. 70/2009

7 The applicant is a Sub Inspector (Wireless) in India Reserved Battalion Lakshadweep Daman, Diu and Dadra & Nagar Haveli since 20.10.2000. His case is more or less similar to the applicants in O.A. 59/09.

8 The official respondents have filed reply statement similar to the one filed in O.A. 59/09

9 The respondent No. 4 filed separate reply statement contending that both SIs and Constables (Wireless) were recruited in single phase by conducting examination in all the three UTs. He further stated that while the applicant got only 43 marks whereas the respondent No. 4 obtained 57 marks. He stated that he got bonus marks for performance in NCC and sports while the applicant has not received any bonus marks. Therefore, it is contended that in the seniority list prepared on the basis of merit list, the 4th respondent is senior to the applicant.

10 The applicant filed rejoinder reiterating his contentions in the O.A.

O.A. 92/09

11 The grievance of the applicant, a Constable (Wireless) in IR Bn Lakshadweep, Daman, Diu and Dadra & Nagar Haveli since 20.11.2000, is that though in the provisional seniority list he was at Sl. No. 5., in the final seniority list his name is placed at Sl. No. 15 whereas others who were recruited on a subsequent date are placed above him. The applicant is challenging the same on the grounds identical to the grounds raised in O.A. 59/09.

12 The respondents 2 & 3 resisted the O.A by filing reply statement on similar lines as has been filed in O.A. 59/09.

O.A. 355/09

13 The applicants are serving Constable(Executive) in India Reserve Battalion, Lakshadweep, Daman, Diu and Dadra & Nagar Haveli since 10.4.1999. They were recruited on 19.3.1999 and were appointed on 10.4.1999. As per the provisional seniority list the 1st applicant was placed at Sl. No. 3 and , the 2nd applicant was at Sl. No. 58 and the 3rd applicant was placed at Sl. No. 73.

The grievance of the applicants is that in the final seniority list persons selected and appointed on subsequent dates are placed above them. According to them the seniority list in accordance with the marks obtained by the candidates in the selection test is illegal and void as the examinations were conducted by different bodies on different dates at different stations by using different questions

papers in different medium.

14 The officials respondents 2&3 and the party respondents filed separate reply statements.

15 The official respondents in their reply statement raised similar contentions as the reply statement in O.A.59/09

16 The party respondents contended that the provisional seniority list prepared in terms of OM dated 3.7.1986 was revised based on the objections raised by the employees and based on the marks obtained in the selection and that there is nothing wrong in it as contended by the applicants.

17 We have heard the learned counsel for the parties and perused the documents produced before us.

18 The main contention of the applicants is that they themselves and the party respondents in all these OAs are not recruited by a common examination, hence, the seniority cannot be determined on the basis of merit list in the examination and that the persons who were recruited by the earlier examination should rank senior.

19 The contention of the respondents on the other hand is that as the examinations could not be conducted on one day in all the three UTs, they conducted it in different phases and it is one and the same selection process. Therefore, on the basis of the objections raised by the employees, they fixed the seniority on the basis of the merit list.

20 It is seen from Annexure R-2(a) the letter issued by the Ministry of Home Affairs dated 2.2.1996 that an India Reserve Battalion for UT of Lakshadweep was sanctioned at a cost not exceeding Rs. 6 crores. Later on, Annexure R-2(b) dated 22.10.1997 was issued by Ministry of Home Affairs intimating the decision to share the IR Bn, among the 3 UTs of Lakshadweep, Daman, and Diu & Dadra and Nagar Haveli. The relevant portion - paras (i) to (iii) are extracted below:

- (i) Two companies of the Battalion would be deployed in Lakshadweep and the other four companies in UTs of Dadra & Nagar Haveli and Daman & Diu.
- (ii) The Administrative Headquarters of the Battalion would be at Kavaratti, Lakshadweep
- (iii) The requirement for the Battalion would be made jointly by the three UTs. 50% of the requirement would be done by the Lakshadweep Administration and the remaining 50% by the UTs of D&D and DNHL.

21 Recruitment Rules were framed and finally the notification of the same was issued on 9.11.1998 vide Annexure R-2(C). Annexure R-2 (J) is the standing order issued for the purpose of recruitment in various cadres. The relevant instructions for constitution of recruitment board for selection /appointment of Sub Inspectors (Executive) is extracted below:

The Recruitment Board will consist of the Commandant /Deputy Commandant, IR Battalion apart from two Assistant Commandants to be nominated by the Administrator of UT of Lakshadweep and Daman & Diu and Dadra & Nagar Haveli. If necessary, a panel of Deputy Commandants and Assistant Commandants from other Battalion /Lakshadweep Police /Daman & Diu and Dadra & Nagar Haveli Police or from other CPMFS may be nominated to work in case of high work load. Requisite officers from other departments as well as subordinate staff to assist the recruitment work may be associated keeping in view their reputation for integrity and reliability by the Administrators of U.T. Of Lakshadweep and Daman & Diu and Dadra & Nagar Haveli. Frequent changes will be done in case of staff connected with physical tests and measurements if necessary even by calling out men from other Units/Battalion.

22 Since the number of personnel to be recruited was high (826 were recruited) it was decided at the level of the then Commandant,

to complete the recruitment, in phases commencing from January, 1999, and ending in October, 1999. This decision, coupled with the inordinate delay in issuing the seniority list, is the reason for the present dispute about seniority. The objective behind the order supra, was to hold recruitment simultaneously in the 3 UTs deploying the required number of additional personnel.

23 The learned counsel for the respondents 2 & 3 was directed to file an affidavit after the hearing was over, to show the promotional avenues for those recruited as Constables and SI(Exe) and the method of filling up the post namely by selection or by promotion based on seniority cum fitness within two weeks' time. He has filed the affidavit on 22.11.2010 indicating the number of personnel recruited and their promotion posts in the cadre of Head Constable, ASI, SI, Inspector, Assistant Commandant and Deputy Commandant as follows:

Name of post	Sanctioned strength	Immediate promotion post in the hierarchy	Number of personnel recruited from Lakshadweep	Number of personnel recruited from DD& DNH
Constable(Exe)	675	Head Constable (Exe)	350	328
Head Constable (Exe)	160	ASI (Exe)	Promotion post	Promotion post
ASI(Exe)	18	SI(Exe)	Promotion post	Promotion post
SI(Exe)	23	Inspector(Exe)	12	9
Inspector (Exe)	7	Assistant Commandant	Promotion post	Promotion post
Asst. Commandant	7	Dy.Commandant	Promotion post	Promotion post
Dy. Commandant	3	N.A.	Promotion post	Promotion post
Constable (Wireless)	26	Head Constable (Wireless)	17	18
Head Constable (Wireless)	4	SI(Wireless)	Promotion post	Promotion post
SI (Wireless)	2	Inspector(Wireless)	1	1
Inspector (Wireless)	1	N.A.	Promotion post	Promotion post

It is stated that the Constables with 6 years of regular service is eligible for promotion to the post of Head Constable, Head Constables with 6 years of regular service in the grade and have passed the promotion test is eligible for promotion as ASI, ASI who have completed 10 years of service failing which combined regular service of 12 years in the post of ASI and HC failing both HCs having 12 years of regular service, and passed the promotional test is eligible for promotion to the post of SI, SI with 5 years of regular service is eligible to be promoted to the post of Inspector, Inspectors with 5 years regular service in the grade is eligible to be promoted as Assistant Commandant, Assistant Commandant with 6 years service in the grade is eligible to be promoted to the post of Deputy Commandant.

24 The details of dates of recruitment and date of joining of applicants and party respondents are furnished below:

	<u>Date of test</u>	<u>Date of joining</u>
Applicants in O.A. 59/09 (SI-Exe)	6.5.1999	18.10.1999
Party Respondents	6.5.1999 and 17.5.1999	18.10.1999
Applicant in OA. 70/09 (SI-Exe)	7.9.2000	20.11.2000
Party Respondents	7.9.2000 19.9.2000	20.11.2000
Applicant in O.A. 92/09(Constable)	7.9.2000	20.11.2000
Party Respondents	19.9.2000	
Applicants in O.A. 355/09(Constable)	19.3.1999	10.4.1999
Party Respondents	4.4.1999 8.4.1999	

25 It is observed that the highest number of personnel was recruited for the category of Constable with a total of 675, which was distributed between UT of Lakshadweep and other UTs in the proportion of 2:1. Logically, the staggering of dates for recruitment should have been done only for the different categories and not for the same category. In SI (Exe) only 18 were recruited. The Commandant also ordered recruitment of SI(Exe) in a single phase dividing the number of posts between UT of Lakshadweep and other two UTs in two equal halves. This might have resulted in holding recruitment on different dates with different question papers.

26 The selection process was completed for Lakshadweep first and thereafter, after the gap of a short time, another selection process was completed for other Union Territories. Therefore in accordance with the rules in force relating to appointment and seniority as available in OM No. 9-11/55 RPS dated 22nd December, 1959 the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment, on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection. The seniority was accordingly fixed ascribing the seniority of first selection to the candidates of the Lakshadweep. After a gap of nearly 8 years following a 1995 Supreme Court judgment which required that in each selection seniority shall be ascribed taking into account merit of each candidate, the seniority list was revised. Therefore, apparently a new exercise was undertaken whereby it was found that others; other than the applicants have acquired more merit in terms of more marks and

therefore provisional seniority list was published in 2008 whereby the applicants seem to have lost their seniority. They had filed objections. However, the list was finalized based on the above Supreme Court dictum based on comparative merit taking the two selections as one composite selection. The applicants would assail these process on the following grounds:-

"There were in fact two selection process. These selection process were compounded by additional facts of difference in language of expression, difference in matrix of questions and answers, methodology of valuation and other connected matters. They would thus say that in every respect it was two selection and the selectees were made aware that selection for Lakshadweep was the first selection. Therefore, they were rightly given seniority and the seniority was accepted for almost a decade and thereafter it was set aside. They would say that the Apex Court judgment would have application only if it is in the same selection process and not through different selection process. They would say that compulsion for them to write in English which is not their mother tongue have severely prejudiced them. There may not be any similarity in the questions. There may not be any similarity in the method of evaluation and therefore they would contend that it is unjustifiable to treat these two different selective process as one selection especially since the medium of Hindi available to other candidates have made their task easier and therefore, it cannot be said that it was one single process. "

27 The party respondents would contend that in fact they acquired more marks and have proven their merit, they would say that the recruitment was done on a single process of selection for a single set of posts even though 50% of the selected would be from the Lakshadweep and 50% from other Union Territories.

28 But, otherwise there is no real methodology available to maintain parity between the two selective process. Two sets of evaluation methodology cannot be made use of to measure the comparative merits of candidates in two different streams. But if we have to accept in full the Ministry of Home Affairs circular then it will

mean that perpetually the candidates from Union Territory of Daman & Diu and Dadra & Nagar Haveli will be denied timely promotion and the recruitees of Lakshadweep will get an edge over the employees of the other two UTs. But after a gap of ten years, it is practically impossible to integrate these two groups in one single unit. If we have to adopt the methodology and yardstick of merit the determination of merit cannot be by marks alone as marks are granted on the basis of powers of expression, correctness of answers and other relative yardstick for one group at a time. These are entirely different in the scheme of things as available to each candidate. Therefore the symbiosis is hardly possible.

29 The delay committed by the respondents in finalising seniority list is unacceptable, especially in view of the fact that the applicants, in fact everyone who is recruited as Constable (Exe)/(Wireless) and SI (Exe)/(Wireless) are due for promotion on completion of 5/6 years of service respectively. According to the counsel for respondents, no promotion has been effected so far. Since there is no gainsaying the fact that a separate selection process with different question papers was conducted in the three Union Territories and since posts of constable and SI (Exe) stand distributed between UT of Lakshadweep and UT of Daman and Diu and Dadra and Nagar Haveli there should be no issue about distribution of promotional posts also between the two Union Territories. For instance, for the initially recruited 675 posts of Constable (Exe) 160 posts of HC (Exe) are sanctioned. Since, 350 personnel are recruited from Union Territories of Lakshadweep and 328 from DD and DNH, the HC (Exe) posts can be distributed in direct proportion to the

working strength of Constables. In SI (Exe), 12 has been recruited in UT of Lakshadweep and seven in UT of Daman and Diu and Dadra and Nagar Haveli. There are only seven posts in the next promotional cadre of Inspector (Exe). Once that step is done, then the independent seniority lists drawn up in Union Territories of Lakshadweep and Daman and Diu and Dadra and Nagar Haveli can be the basis for the first promotion to be effected in these two cadres. In bigger departments like Railways, Income Tax, Customs, Post and Corporation like BSNL, seniority list are maintained at various unit levels to grant the promotions in Group C cadre and combined seniority list is drawn up in the feeder category, only when the employees are promoted to non-gazetted Group B cadre or gazetted Group B and Group A cadre. In a similar fashion, while the IR Bn will remain common for all the three Union Territories in the Group C cadre the seniority list based on merit will be issued by Union Territories of Lakshadweep and Daman and Diu and Dadra and Nagar Haveli independently.

30 It is seen, that from the Inspector (Exe) post, the next promotion is to Assistant Commandant which is shown as equivalent to Deputy Superintendent of Police and placed in Group A cadre. Usually, in Central Service for those who are getting recruited in Group C Cadre, there is an intermediary post in Group B. I think, it is not the case with the Police Service. For 7 posts of Inspectors, provision is made for 7 posts of Assistant Commandant and 3 posts of Deputy Commandants thereafter. Therefore, a combined seniority list has to be drawn up, at the level of Inspector (Exe) as the next promotion is to the Group-A cadre which should normally be through a stringent

process of selection in consultation with UPSC.

31 A comparison of the two Union Territories will reveal that Lakshadweep is declared as a tribal area and it is a melange of islands, separated by many nautical miles and dependent on mainland Kerala for all its basic necessities like, provisions, vegetables and all other items of household goods, construction materials and whatever. As opposed to it, Union Territories of Daman and Diu and Dadra and Nagar Haveli are located in highly industrialized belt of Gujarat and Maharashtra. Many of the factories owned by those in Maharashtra and Gujarat are located in Daman and Silvassa. Therefore, the opportunity for deputation on promotion for those in IR Bn DD and DNH is bright while for those in Union Territories of Lakshadweep, it will be a tough call. Hence, in all fairness, when the combined seniority list is drawn up in the ratio of 1:1 from the unit level seniority list of the two UTs, the first employee may be from the seniority list of UT of Lakshadweep. It is also due to the fact that they enjoyed higher seniority for a long time.

32 It is observed that as the IR Bn personnel in the cadre of Constables and SI(Exe) were recruited in 1999 and 2000, they are now entitled for financial upgradation under MACP. Financial upgradation is personal and not linked to seniority, the eligibility criterion being completion of 10 years of service. The due process to be observed for regular promotion, like conduct of departmental test, convening of DPC, has to be followed for financial upgradation under MACP also. The applicants and all others similarly placed have become eligible for regular promotion to the cadre of HC and Inspector. The delay in

issuance of seniority list, can only be the conceivable reason for not initiating action for holding departmental test, convening DPC etc. Therefore, even at the cost of going beyond the relief sought for, in the interest of justice, the respondents are directed to take action for granting MACP, instead of waiting for finalisation of seniority list. Once the financial upgradation is granted, it is merely a matter of assigning the due designation of the higher cadre as their pay get placed in the higher cadre while they continue in the lower cadre till they become due for their regular promotion.

33 In view of the above, the O.A is allowed with the following directions:

- (i) The impugned final seniority lists at Annexure A1/A2 etc. are quashed.
- (ii) The seniority list of Constable(Exe.) /Constable (Wireless), Head Constable(Exe) /Head Constable (Wireless), and ASI(Exe)/ASI (Wireless) shall be maintained separately for U.T. of Lakshadweep and U.T. of Daman Diu and Nagar Haveli in the ratio of 50 : 50, on the basis of the date of recruitment,
- (iii) In the cadre of Constable(Exe)/Constable(Wireless) the combined seniority list at the level of ASI(Exe) and ASI(Wireless) shall be drawn up in the ratio of 1:1 from the unit level seniority list of the two UTs, the first employee shall be from the seniority list of UT of Lakshadweep and the next from the UT of DD and DNH and the other names will follow in the same order.
- (iv) The seniority list of SI(Exe) /SI (Wireless) and Inspector (Exe) shall be maintained separately for U.T. of Lakshadweep and U.T. Daman Diu and Nagar Haveli in the ratio of 50 : 50 on the basis of the date of recruitment and their working strength.
- (v) In the cadre of direct recruit SI(Exe), the combined seniority list for further promotion to Asst. Commandant will be drawn up in the ratio of 1:1 from the unit level seniority list of Inspector (Exe) of the two UTs, the first employee shall be from the seniority list of UT of Lakshadweep and the next from the UT

of DD and DNH and the other names will follow in the same order.

(vi) Further, promotion of SI(Wireless) is not made available to us. Therefore, the combined seniority list will be at SI level.

(vii) The promotional posts of Constable(Exe) and Constable (Wireless up to the rank of Sub Inspector shall be divided between Lakshadweep and other Union Territories in the proportion of 1:1 when the promotion is to be granted on the basis of seniority. However, the distribution of the promotional posts can be done based on the actual working strength in the three Uts as the number of Constables recruited in UTs of LD and that of DD and DNH is not the same.

(viii) The promotional posts of SI (Exe) up to the rank of Assistant Commandant shall be divided between Lakshadweep and other Union Territories in the proportion of 1:1 when the promotion is to be granted on the basis of seniority. However, the distribution of the promotional posts can be done based on the actual working strength in the three UTs as the number of SIs recruited in UTs of LD and that of DD and DNH is not the same.

(ix) For the purpose of granting MACP, action shall be initiated to hold departmental test and convening of DPC in accordance with the rules on the subject. A time line of three months is granted to complete the work as the financial upgradation is not linked with seniority.

(x) From the rank of Assistant Commandant, the methodology of selection based on merit shall be the yardstick of promotion.

(xi) The unit seniority list as directed above at (ii) and (iv) shall be prepared within a period of two months from today. The combined seniority list as directed in (iii) and (v) shall be drawn up within a period of 6 months from today. No costs.

Dated 3-1-2011

DR K. B. SU RESH
JUDICIAL MEMBER

K. NOORJEHAN
ADMINISTRATIVE MEMBER

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