

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No. 181/000145/2017**

Wednesday, this the 28<sup>th</sup> day of February, 2018

**CORAM**

**Hon'ble Mr.U.Sarathchandran, Judicial Member  
Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member**

Fouziya Z.V.,  
W/o. Abdul Shukoor M., Aged 34 years,  
Residing at Zeenath Veedu, Amini Island,  
Union Territory of Lakshadweep – 682 552. .... **Applicant**

**(By Advocate – Ms. Rekha Vasudevan)**

**V e r s u s**

1. Union Territory of Lakshadweep,  
Represented by the Administrator, Kavaratti Island,  
Lakshadweep – 682 555.
2. The Secretary,  
Department of Social Welfare and Tribal Affairs,  
Administration of Union Territory of Lakshadweep,  
Kavaratti Island, Lakshadweep – 682 555.
3. The Director,  
Department of Social Welfare and Tribal Affairs,  
Administration of Union Territory of Lakshadweep,  
Kavaratti Island, Lakshadweep – 682 555.
4. Lukumanul Hakkeem S.C.,  
Madeena Manzil, Kadmat Island,  
Lakshadweep – 682 556. .... **Respondents**

**(By Advocate – Mr. S. Manu (R1-R3))  
(By Advocate – Mr. K.B. Gangesh (R4))**

This Original Application having been heard on 20.02.2018, the Tribunal on  
28.02.2018 delivered the following:

## ORDER

*Per: E.K. Bharat Bhushan, Administrative Member*

O.A.No. 145/2017 is filed by Smt. Fouziya Z.V, a resident of Amini Island under the Union Territory of Lakshadweep aggrieved by Circular No.8/1/2013-SW&TA/56 dated 2.2.2017 issued by the 3<sup>rd</sup> respondent by which appointment to the post of Social Welfare Inspector was offered to the 4<sup>th</sup> respondent and two others directing them to report at Social Welfare & Tribal Affairs Department from 6.2.2017 to 20.2.2017 for verification of documents.

2. The reliefs sought in the OA are as under:

- (a) *Quash Annexure A9 Select List to the extent it includes the 4<sup>th</sup> respondent at Sl.No.1 for the post of Social Welfare Inspector under the 3<sup>rd</sup> respondent.*
- (b) *Declare that the Annexure A1 Rules of 1998 are not applicable to the selection to the post of Social Welfare Inspector under the 2<sup>nd</sup> respondent and that the recruitment to the said post is governed by Annexure A2 Recruitment Rules of 2014 and that the 4<sup>th</sup> respondent herein is not entitled for any relaxation of age as per Annexure A1 Rules.*
- (c) *Direct the respondents 2 and 3 to re-draw the Select List for the post of Social Welfare Inspector notified as per Annexure A5 Employment Notice, by excluding the 4<sup>th</sup> respondent from the Select List and including the applicant herein at Serial No.2 in the re-drawn Select List for the post of Social Welfare Inspector.*
- (d) *To grant such other reliefs as may be prayed for and the court may deem fit to grant, and*
- (e) *Grant the costs of this Original Application.*

3. The brief facts of the case are as under:

The applicant belongs to the Scheduled Tribe (ST) Community and comes from Lakshadweep Island. She had applied for the post of Social

Welfare Inspector pursuant to a notification inviting applications from qualified local candidates of Lakshadweep to fill two vacancies of Social Welfare Inspector through direct recruitment. A copy of the notification containing the Rules relating to recruitment to the post dated 04.03.2014 is at Annexure A2. An Employment Notice inviting applications was published on 31.08.2015 (Annexure A5). Educational qualifications prescribed for the post is degree in Sociology/Social Work from a Government recognized university and the age limit for direct recruits is 21-30 years. Relaxation for Government Servants/Scheduled Caste/Scheduled Tribe candidates, Exservicemen and other category of persons are on offer in accordance with the instructions/orders of the Government of India from time to time. The applicant's date of birth is 16.05.1982 and being eligible for the 5 year relaxation, being an ST candidate, she is within the age limit prescribed for the post. The initial check list was drawn up and published on 12.11.2015 by the 3<sup>rd</sup> respondent (Annexure A6), wherein the applicant stood at Serial No. 2 and 4<sup>th</sup> respondent at Serial No. 13. It was stated against the name of the 4<sup>th</sup> respondent that he is a non-ST candidate and was over-aged for the post. In the second check list published on 19.05.2016, the applicant again stood at Serial No. 2 and 4<sup>th</sup> respondent's name did not figure at all (Annexure A7). In the revised final check list published on 21.06.2016 (Annexure A8), the applicant continues in position at Serial No. 2 with the 4<sup>th</sup> respondent making a re-entry at Serial No. 9.

4. After written test and interview, a final list was published on 02.02.2017 in which the 4<sup>th</sup> respondent's name appeared at Serial No. 1 with

the applicant shown as Serial No. 1 in the waiting list (Annexure A9 impugned order). The father of the applicant had obtained information under RTI as to how the 4<sup>th</sup> respondent was included and he received a reply which is at Annexure A10. From this document, it is learnt that the 4<sup>th</sup> respondent was initially declared not eligible for the age relaxation which is eligible only for ST candidates. However, respondent No. 4 took a stand that Annexure A1 Rules is being implemented by the Lakshadweep Administration in the case of recruitment by open competitive examination. Using the general provision of extension of eligibility age by 2 years envisaged in the notification published on 21.12.1998 (Annexure A1), the 4<sup>th</sup> respondent was included in Annexure A8 final check list. The applicant's representation made to the 1<sup>st</sup> and 2<sup>nd</sup> respondents on 17.02.2017 (Annexure A1 and Annexure A12) regarding this interpretation received no response. Aggrieved, the applicant has filed the aforesaid OA.

5. As grounds, the applicant states that Annexure A9 select list is liable to be quashed as the official respondents are not entitled to grant relaxation to non-ST candidates over and above what has been prescribed in Annexure A2 Recruitment Rules. Rule 4 of Annexure A1 Rules of 1998 was for the purpose of amending existing Recruitment Rules, effectively increasing the upper age limit by 2 years. In so far as the selection in question is concerned, the recruitment is governed by Annexure A2 Recruitment Rules issued in 2014, which has been formulated taking into account the upper age limit already granted by Annexure A1 notification. So, further extension in age is not envisaged, except for special categories. Hence, the stand adopted by

the official respondents that Annexure A1 Rules will prevail for the recruitment to the post in question is erroneous and is liable to be set aside. Further, the office Memorandum of DoPT at Annexure A3 is relevant and it unambiguously states that reservation in Lakshadweep is to be restricted to candidates belonging to ST community alone (upto a limit of 45%). Crucial date for determining age limit is 30.09.2015, which is the last date for receipt of applications. The date of birth of 4<sup>th</sup> respondent is 05.04.1985. Hence, as on 30.09.2015, he has crossed the age of 30 years and is, thus, over-aged. Even if the 4<sup>th</sup> respondent is considered under the term of local candidate due to his being domiciled in Lakshadweep, he will not be eligible for any age relaxation or marks on that account as available to ST candidates.

6. Per contra, the respondents 1 to 3 have filed a reply statement denying the contentions made in the OA. It is admitted that the 4<sup>th</sup> respondent is not an OBC candidate but is a local candidate of Lakshadweep as clarified by Service Department of Lakshadweep and he was granted age relaxation as per notification of DoPT dated 21.12.1998 (Annexure R1(d)-Annexure A1). It is admitted that the recruitment to the post of Social Welfare Inspector was conducted under Annexure R1(c)-Annexure A2 (Recruitment Rules). The post was meant to be filled up from among qualified local candidates from Lakshadweep and not from STs or any other particular category. The applicant was over 30 years but he was included in the check list by allowing age relaxation for 5 years for ST candidates. When the 4<sup>th</sup> respondent was excluded from the check list, he represented against his exclusion by presenting Annexure R1(b) notification to prove that he is entitled to get relaxation in age

of maximum of 2 years. This contention made by him was accepted by the official respondents and he came to be included in the final check list.

7. After written test and personal interview, the 4<sup>th</sup> respondent had come first and the applicant came 3<sup>rd</sup> in the select list. The applicant did not raise any complaint against the final check list which was published on 21.06.2016 and it was only on 10.02.2017 i.e., after 8 months of publication of the final check list, that she chose to raise an objection. After participating in the selection process, she cannot turn around and question the outcome of the selection.

8. The 4<sup>th</sup> respondent filed a reply statement, mostly on the same lines as the official respondents. The fact that Annexure A2 Recruitment Rules were published after Annexure A1 Rules does not by itself make the latter in-applicable to the upper age limit prescribed in Annexure A2 Recruitment Rules. It was due to this reason that the Administration granted the benefits envisaged under Annexure A1 Rules to all applicants who participated in the selection to various posts, conducted under direct open competitive examination. The applicant has not produced the Recruitment Rules alleged to have been in force in respect of the post as on 01.04.1999 while contending that the present Recruitment Rules has taken care Rule 4 of Annexure A1. Further, it is argued that Annexure A3 only states that no reservation is envisaged for OBC candidates under Lakshadweep Administration but it does not mean that an OBC candidate is ineligible for the upper age limit prescribed by the Central Government. He submits that he is an OBC candidate and is eligible for age relaxation of 3 years. Annexure A6 and Annexure A7 check

lists were preliminary documents issued by the Administration which did not take into account the eligibility of the 4<sup>th</sup> respondent for getting relaxation in a selection involving direct open competitive examination. On his representation, the error was corrected and there is no illegality in issuing Annexure A9 check list.

9. Applicant filed a rejoinder reiterating most of her contentions in the OA. She states that Annexure A2 Recruitment Rules had been framed taking into account Annexure A1 Central Civil Service and Civil Posts (Upper Age Limit for Direct Recruitment) Rules, 1998. Hence, there is no question of further relaxation to be given on the basis of Annexure A1. Annexure A1 Rules do not have any relevance on the Recruitment Rules framed after 01.04.1999 as the extension in age had already come to be absorbed in subsequent Rules. She has produced Annexure A3 OM dated 25.01.1995 in which the question of Other Backward Classes candidates is clarified. It is clear from this document that an OBC is eligible to get the benefit of age relaxation granted by the Government of India only when the said candidates are competing for vacancies reserved specifically for them. Reservation benefits in Lakshadweep is available only to ST candidates and to no one else. Hence, the 4<sup>th</sup> respondent is not eligible for any relaxation granted by the Government of India. Since, the 4<sup>th</sup> Respondent is continuing in the post of Social Welfare Inspector subject to the outcome of this OA, he cannot take it as a defence to validate his appointment which has been made illegally.

10. We have heard Mrs. Rekha Vasudevan, learned counsel appearing for the applicant. She forcefully argued that Respondent No.4 has been the

beneficiary of a non-existent provision. He has been given the benefit of age relaxation of 2 years envisaged under the notification at Annexure A1, whereas the relaxation has already been taken into account in Annexure A2 notification, which was issued subsequently. Further he can have no case that being an OBC candidate, he is entitled to age relaxation, as in Lakshadweep no other communities other than Scheduled Tribes are entitled to reservation. From Annexure A10 documents, which are copies of file notings, it is apparent that the benefit had accrued to Respondent No.4 on account of an erroneous interpretation given by the ministerial section of the office of Respondent No.1. A further document was filed by Smt. Rekha Vasudevan through MA No.213/2018 which is a true copy of a communication issued by the Deputy Secretary to Government of India dated 27.9.1972 clarifying that reservation in Union Territory of Lakshadweep is available only to members of Scheduled Tribes.

11. Shri R.Sreeraj representing Shri S.Manu, learned standing counsel for the Lakshadweep Administration and Shri K.B.Gangesh, learned counsel for the 4<sup>th</sup> respondent were heard. Both the learned counsel were of the view that the general exemption granted under Annexure A1 notification still holds sway and by virtue of this Respondent No.4 was eligible for selection. Shri Gangesh also produced a judgment of the Hon'ble Supreme Court in ***Sarajakumari D Vs. R. Helen Thilakom and others – (2017) 9 SCC 478: AIR 2017 SC 4582*** and argued that once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection.



12. We have considered the documents and pleadings in detail. Annexure A1 notification issued by DOP&T on 21.12.1998 was a general relaxation which came into force on 1.4.1999 relating to all direct recruitments by open competitive examinations. In Annexure A2 issued by the Lakshadweep Administration on 4.3.2014 the age limit mentioned for the recruitment in question is 21-30 years with relaxation for special categories. There were no convincing reasons brought before us by the respondents to prove that the benefit envisaged under Annexure A1 would continue to operate and should be added to the age limit subsequently brought out in Annexure A2. The applicant here is an ST candidate and is clearly eligible for the extended age limit, being a member of the special category. On this ground, Respondent No.4 was omitted from consideration, being over-aged in the initial check list. He came back into reckoning based on a somewhat dubious interpretation given by the Administration Section evidenced in Annexure A10 enclosed. We do not find this interpretation correct or fair.

13. A strong argument was raised by Shri Gangesh, learned counsel for the 4<sup>th</sup> respondent that having participated in the selection process and having failed to make the grade, the applicant cannot now turn around and question the process of selection. He has called to his assistance the judgment of the Hon'ble Apex Court in *Sarojakumari D Vs. R. Helen Thilakom and others – (2017) 9 SCC 478: AIR 2017 SC 4582*. We see that the circumstances involved in that case are different from the one which we are considering here. That case involved a Teacher who was seeking promotion after having not raised any objection when direct recruitment was initially

resorted to wherein she had failed to make the grade. Apparently the issue being considered here cannot be more dissimilar. Great caution has to be exercised in citing judgments of courts as even a relatively minor difference in the circumstances would make them distinct and non-applicable. This is one such situation so far as the question involved in this O.A is concerned.

14. Considering all factors, the OA succeeds. The reliefs sought in the OA are allowed in full, except the one relating to costs. Necessary steps in compliance with this order should be taken within a month of receipt of a copy of this order. There is no order as to costs.

*(E.K. Bharat Bhushan)*  
*Administrative Member*

*(U. Sarathchandran)*  
*Judicial Member*

*kspps*

**List of Annexures of the applicant**

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|--------------|---|--|
| Annexure A-1 | - | True copy of the Central Civil Services and Civil Posts (Upper Age Limit for Direct Recruitment) Rules 1998.                           |
| Annexure A-2 | - | True copy of the Notification F.No. 2/01/2013-SWTA dated 04.03.2014 issued by the 1 <sup>st</sup> respondent.                          |
| Annexure A-3 | - | True copy of the Office Memorandum No. 36017/1/2004-Estt (Res.) dated 05.07.2005 issued by the Department of Personnel and Training.   |
| Annexure A-4 | - | True copy of the Caste Certificate dated 19.06.1997 issued by the Executive Magistrate, Amini Island.                                  |
| Annexure A-5 | - | True copy of the Notice F.No. 8/1/2013-SWTA/474 dated 31.08.2015 issued by the 3 <sup>rd</sup> Respondent.                             |
| Annexure A-6 | - | True copy of the Circular F No. 8/1/2013-SWTA/600 dated 12.11.2015 along with the Check list issued by the 3 <sup>rd</sup> Respondent. |
| Annexure A-7 | - | True copy of the Notice F No. 8/1/2013-SWTA/273 dated 19.05.2016 along with the Check list issued by the 3 <sup>rd</sup> Respondent.   |
| Annexure A-8 | - | True copy of the Notice F No. 8/1/2013-SWTA/343  |

dated 21.06.2016 along with the Check list issued by the 3<sup>rd</sup> Respondent.

- Annexure A-9 - True copy of the Circular F No. 8/1/2013-SW&TA/56 dated 02.02.2017 issued by the 3<sup>rd</sup> Respondent.
- Annexure A-10 - True copy of the file noting as obtained under the Right to Information Act.
- Annexure A-11 - True copy of the representation dated 17.02.2017 submitted by the applicant to the 1<sup>st</sup> Respondent.
- Annexure A-12 - True copy of the representation dated 17.02.2017 submitted by the applicant to the 2<sup>nd</sup> Respondent.
- Annexure A-13 - True copy of the Office Memorandum No. 43013/2/95-Ests(SCT) dated 25.01.1995 issued by the Department of Personnel & Training.
- Annexure A-14 - True copy of the letter F. No. 52/30/72-ANL dated 27.09.1972 issued by the Deputy Secretary to the Government of India.

**List of Annexures of the Respondents 1 to 3**

- Annexure R1(a) - True copy of the note file page 32 paragraph 201.
- Annexure R1(b) - True copy of the Notification No. 15012/6/98-Estt. (D) dated 21.12.1998 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel.
- Annexure R1(c) - True copy of Notification F. No. 12/01/2013-SWDA dated 04.03.2014 issued by the Administration of Union Territory of Lakshadweep, (Department of Social Welfare and Tribal Affairs).

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PPS to Member

