

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.181/00041/2015
&
Original Application No. 181/00856/2016

Monday, this the 5th day of February, 2018

CORAM:

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

OA 41/15

Ameen Bin Mohammed C.N.,
Aged 27 years, S/o. Mohammed Koya P.,
Residing at Baitul Ameen, Shanthi Path Road,
Kavaratti - 682 555,
Union Territory of Lakshadweep.

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Applicant

(By Advocate - Mr. T.C. Govindaswamy)

V e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Lakshadweep Administration,
Kavaratti - 682 555.
2. The Secretary,
Department of Information & Public Relations,
Lakshadweep Administration, Kavaratti - 682 555.
3. The Director,
Department of Information & Public Relations,
Lakshadweep Administration,
Kavaratti - 682 555.

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Respondents

(By Advocate - Mr. S. Manu)

OA 856/16

Noufal Cheruthottam,
Aged 31 years, S/o. Sayed Mohammed Koya,
Cheruthorram House, Kalpeni Island,
Union Territory of Lakshadweep - 682 557.

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Applicant

(By Advocate - Mr. T.C. Govindaswamy)

V e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Lakshadweep Administration,
Kavaratti - 682 555.
2. The Secretary,
Department of Information & Public Relations,
Lakshadweep Administration, Kavaratti - 682 555.
3. The Director,
Department of Information & Public Relations,
Lakshadweep Administration,
Kavaratti - 682 555.

... **Respondents**

(By Advocate - Mr. S. Manu)

This Original Applications having been heard on 30.01.2018, the Tribunal on 5.2.2018 delivered the following:

ORDER

Per: E.K. Bharat Bhushan, Administrative Member

Since common issues of facts and law are involved in both O.As, they are disposed of through a common order.

2. OA No. 181/41/2015 is filed by Mr. Ameen Bin Mohammed C.N, a native of Kavaratti Island and OA No. 181/856/2016 is filed by Mr.Noufal Cheruthottam, a native of Kalpeni Island seeking a direction to the respondents to fill up the vacancies of Information Assistant-cum-Photographer in accordance with the Recruitment Rules in force at the time of occurrence of the vacancies and to consider them also for appointment.

3. The reliefs sought are as under:

(a) Declare that the nonfeasance on the part of the respondents in the matter of filling up the existing vacancies of Information Assistant-cum-Photographer is arbitrary, discriminatory, contrary to law and hence, unconstitutional.

(b) Direct the respondents to fill up the vacancies of Information Assistant-cum-Photographer forthwith in accordance with Recruitment Rules, which and were the force at the time of occurrence of the vacancies, duly considering the applicant also, with all consequential benefits arising therefrom.

(c) Award costs of an incidental to this application;

(d) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

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

5. The applicants are graduates in Economics/English and certificate holders of three months course in photography. They are aggrieved by the non-filling up of the existing vacancies in the cadre of Information Assistant-cum Photographer (IAP for short) under the 2nd respondent. Out of the 11 posts of Information Assistant -cum- Photographer carrying the grade pay of Rs. 2,800/-, 5 posts remained vacant. As per the Recruitment Rules in force, applicants are eligible to be considered for the post.

6. Respondents have not taken any steps to fill up the vacancies. Instead they are trying to amend the Recruitment Rules with ulterior motives. This is evident from Annexure A1 produced by the applicants, which was obtained under RTI Act. It is seen from the document at Annexure A1 that the Recruitment Committee constituted was not satisfied with the existing provisions of the Recruitment Rules and suggested the department to amend the Recruitment Rules. Hence a proposal for amendment was stated to have been prepared and placed before the competent authority. Applicants submit that the Recruitment Committee has no power for such a direction to amend the Recruitment Rules. Applicants and similarly situated persons, being aggrieved by the above action of the respondents, submitted representations to the respondents. One such representation was replied to by the 3rd respondent stating that the department is not

appointing IAPs on contract basis or daily wages and that the individuals can apply when the vacancy is eventually notified. Hence the applicants have filed the above O.As for the aforesaid reliefs.

7. As grounds the applicants submit that the posts are created by the Government to serve a public purpose. Hence the non-filling up of the vacancies of IAP is arbitrary, discriminatory, contrary to law and violative of the constitutional guarantees enshrined in Articles 14 and 16 of the Constitution of India. The failure on the part of the respondents in initiating action to fill up the vacancies and to consider the applicants who are otherwise eligible, is arbitrary and violative of the constitutional guarantee enshrined in Articles 14 and 16 of the Constitution of India. The Recruitment Committee has no power to point out the correctness or otherwise of the Recruitment Rules or to suggest amendment to the same. The willful and deliberate inaction of the respondents has resulted in huge public loss. Respondents are bound to initiate immediate action for filling up the existing vacancies of IAP, duly considering the applicants also.

8. Respondents have filed a reply statement in OA 41/2015 and a counsel statement in OA 856/2016 refuting the contentions in the OAs. They submit that it is not true that the department is functioning without Information Assistant-cum-Photographer in Androth, Kalpeni, Kiltan and Chetlat Islands. Proper charge arrangements have been made in those places under the supervision of SDOs of the respective Islands. Even though steps were taken to notify the vacancies in 2013 and the matter was placed before the Secretary, he had constituted a Recruitment Committee on the basis of Circular No.12/37/2005-Services dated 28.4.2007 to finalize the selection. The Recruitment Committee opined that the qualifications prescribed in the

Recruitment Rules are not commensurate with the present requirements of the post, considering the vast development in the field of Information Technology and Photography and suggested amendment of the Recruitment Rules. [Annexure R1(a)]. The competent authority accepted the proposal for amendment and the proposed amendments have been placed before the Recruitment Rule Amendment Committee. It is only for the purpose of getting better qualified candidates, that the amendments have been proposed. No individual can insist that the administration should notify and fill up vacancies within a prescribed time. It is a settled legal proposition that even a selected candidate does not have any legal right in this regard. They have cited the decision in ***Subha B Nair Vs. State of Kerala - (2008) 7 SCC 210*** to state that a decision on the part of an employer, whether to fill up existing vacancies or not, is within his domain and on this limited ground, in the absence of discrimination or arbitrariness, a court ordinarily should not interfere in such matters. They have also cited another decision in ***State of Orissa Vs. Rajkishore Nadna - (2010) 6 SCC 777*** wherein the Hon'ble Supreme Court observed:

"It is the exclusive prerogative of the employer/State Administration to initiate the selection process for filling up vacancies occurred during a particular year. The Courts/Tribunal have no competence to issue direction to the State to initiate selection process to fill up the vacancies. A candidate only has a right to be considered for appointment, when the vacancies are advertised and selection process commences, if he possess the requisite eligibility."

The applicant has no indefeasible right to get any direction to fill up the vacancies. They have also referred to the decisions in ***Vinodan T. Vs. Universality of Calicut - (2002) 4 SCC 726***, ***Tamilnadu Administrative Service Officers Association Vs. Union of India - (2000) 5 SCC 728*** and ***Dr. Ramulu's case - (1997) 3 SCC 59*** to argue that the State is not bound to fill up the vacancies present therein, nor is there any corresponding

right vested in an eligible employee to demand that such posts should be filled up. They pray for dismissal of the O.As.

9. Applicant in OA 41/2015 filed a rejoinder reiterating his contentions in the OA. It is further stated that respondents have not stated any reason for not notifying the vacancies in 2013. Applicants are eligible even as per the proposed Recruitment Rules as both are graduates. The respondents are deliberately keeping the posts vacant so that they can at some point of time make appointment of persons of their choice.

10. Shri T.C.Govindaswamy, learned counsel appeared for the applicants and Shri R. Sreeraj, learned counsel representing Shri S. Manu, learned standing counsel appeared for the respondents. We have perused the documents/records produced.

11. The issue lies in a narrow compass. The relief sought by the applicants in the two O.As is a direction from the Tribunal to the respondents to fill up the existing vacancies of Information Assistant-cum-Photographers under the 2nd respondent. Applicants are aspirants to the posts and would like to apply for selection, if the vacancies are advertised by notification. The employer ie., the Lakshadweep Administration, while considering the issue of filling up the vacancies decided to have more qualified people available for selection. For this purpose they came to the conclusion that the eligibility criteria contained in the existing Recruitment Rules need amendment. They have proceeded to amend the same and further action is being proceeded with. We see no impropriety in the action of the respondents. As made clear in the various citations made in the reply statement, it is the inalienable right of the State to decide on filling up of vacancies under its domain. There can be no compulsion whatsoever the circumstance, forcing the respondents to fill up the vacancies as and when they arise. Viewed from this perspective, they are also well within their right to

fix the eligibility criteria as per their requirement and better judgment. We see no merit in the applicants' case. O.As are accordingly dismissed. No costs.

(E.K. Bharat Bhushan)
Administrative Member

(U. Sarathchandran)
Judicial Member

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List of Annexures of the applicant in OA 41/2015

- Annexure A-1 - True copy of file note collected by the applicant under the Right to Information Act.
- Annexure A-2 - True copy of letter bearing F. No. 1/3/2010-I&PR/404 dated 13.03.2013, issued by the 3rd respondent.
- Annexure A-3 - True copy of representation dated 30.11.2013 submitted to the Collector and Development Commissioner & Secretary, Information & Public Relations.

List of Annexures of the Respondents

- Annexure R1 (a) - A true copy of the Recruitment Rules.

List of Annexures of the applicant in OA 856/2016

- Annexure A-1 - True copy of file note collected by the applicant under the Right to Information Act.
- Annexure A-2 - True copy of letter bearing F. No. 1/3/2010-I&PR/404 dated 13.03.2013, issued by the 3rd respondent.

List of Annexures of the Respondents

Nil.

PPS to Member