

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application Nos.181/00095/2015  
&  
181/00101/2015**

Monday, this the 17<sup>th</sup> day of January, 2019

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member  
Hon'ble Mr.Ashish Kalia, Judicial Member**

**O.A No.181/00095/2015**

**Sajeed K.P  
Kakkinipura (H), Kavaratti Island  
Lakshadweep- 682 555** ..... **Applicant**

**(By Advocate – Mr.Joby Cyriac)**

**V e r s u s**

- 1      The Director  
         Department of Education  
         Union Territory of Lakshadweep  
         Kavaratti Island, Pin – 682 555
2.      The Administrator  
         Union Territory of Lakshadweep  
         Kavarathi – 682 555
3.      The National Council for Teacher Education (NCTE)  
         Hans Bhawan, Wing-II, Bahadurshah Zafar Marg  
         New Delhi – 110 002, represented by its Chairman.....      **Respondents**

**(By Advocate – Mr.S.Manu for R 1&2, Mr.N.Anilkumar,SCGSC for R3 )**

**O.A No.181/00101/2015**

1.      S.Ashraf, aged 26 years  
         S/o.Sainul Hameed.T.K  
         Safiyabiyoda (H), Kavaratti

2. B.Rahmathulla  
S/o.Cheriyakoya.C  
Bidumakad (H), Androth
3. Mohammed Saleem Chisthi RM  
S/o.Abdul Kader C.P  
Ramlath Manzil  
Andrott Island, U.T of Lakshadweep ..... **Applicant**

**(By Advocate – Mr.Joby Cyriac)**

**V e r s u s**

- 1 The Director  
Department of Education  
Union Territory of Lakshadweep  
Kavaratti Island, Pin – 682 555
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New Delhi – 110 002, represented by its Chairman ... **Respondents**

**(By Advocate – Mr.S.Manu for R 1&2, Mr.N.Anilkumar,SCGSC for R3 )**

These Original Applications having been heard and reserved for orders on 14.1.2019, the Tribunal on 17.1.2019 delivered the following:

**ORDER**

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

Original Application Nos. 181/00095/2015 and 181/00101/2015 have common points of fact and law involved and hence are being disposed of through this common order. The pleadings, documents and records in OA No. 181/00095/2015 are referred to in this common order for the sake of convenience.

2. Original Application No.181/00095/2015 has been filed by Shri.K.P.Sajeed and Original Application No.181/00101/2015 by S.Ashraf along with two others. The applicants in the two Original Applications are candidates aspiring to the post of Physical Education Teacher in the schools coming under first respondent viz; Union of India as per Annexure A-1 Employment Notice. The reliefs sought in the O.A No.181/95/2015 are as follows:-

“i. To pass appropriate order or direction commanding the respondent no.1 and 2 that the selection to the existing vacancies for the post of Physical Education Teacher covered by Annexure A-1/Employment notice shall be done only in accordance with the Annexure A-3/the existing Recruitment Rule.

ii. To set aside the Annexure-A in Annexure A-1/Employment Notice as far as it prescribes the conditions that Diploma in Physical Education (B.P.Ed), Bachelor in Physical Education (B.P.Ed) and Masters in Physical Education are to be obtained from the institutions recognized by NCTE in terms of NCT Act and further that the candidates should produce proof that the course they have passed and the institution in which they attended the course are recognized by National Council for Teacher Education (NCTE) along with the application for the post holding that such conditions are illegal as it is inconsistent, contrary and not in tune with the Annexure A-3/ the existing Recruitment Rule. ”

3. The applicant in O.A 181/95/2015 is a native of Kavaratti Island of Lakshadweep. The Director of Education, Kavaratti had issued Employment Notice, F.No.6/7/2014-Edn.Estt.633 dated 18/08/2015 (Annexure A-1), calling for applications from qualified local candidates for appointment to the post of Physical Education Teacher. The essential qualification for the

post was set out as follows:-

“ BPE (Bachelor of Physical Education)/Graduate from a recognised University with Bachelor Degree in Physical Education (B.PEd.) from a recognised University. ”

As ‘Note’ to Annexure – A which laid down the essential qualification, the following is given:-

“ Note: The Diploma in Physical Education (D.P.Ed.), Bachelor in Physical Education (B.P.Ed.) and Master in Physical Education (M.P.Ed.), are to be obtained from the institutions recognised by NCTE in terms of NCTE Act and Regulations. Therefore, the candidate should produce the proof for recognition of the course and the institution by the NCTE along with the application. ”

4. The contention of the applicants in these two Original Applications is that the restrictive clause mentioned under ‘Note’ is at variance with the provision in the Recruitment Rules under ‘Essential Qualifications’. In other words, the essential qualification in the Recruitment Rule Annexure A-3 published in the Gazette dated 18.3.2009 is the same as the essential qualification mentioned in the Employment Notice. However, the applicants are aggrieved by the introduction of the ‘Note’ which restricts the eligibility

to Degree/Diploma obtained from institutions recognised by NCTE in terms of NCTE Act and Regulations only.

5. It is maintained in the Original Applications that the law has been settled by the Hon'ble Supreme Court in *V.K.Sood v. Secretary, Civil Aviation and Others* – 1993 Supp(3) SCC 9 as well as in *Mohd Satraj and Another v. State of UP and Others* reported in AIR 2006 SC 3492, which lays down that the fixation of minimum educational qualification should be based on existing Recruitment Rules. By introducing a proviso in the Employment Notice, which does not find a place in Annexure A-3 Recruitment Rules, the respondents have restricted the eligibility for applying to the post of Physical Education Teacher.

6. This Tribunal in O.A 181/00090/2015 by order dated 6.11.2015 (Annexure A-4) had clarified on the paramountcy of the Recruitment Rules. It had been ordered that in the event the respondents wanted to introduce any new modifications, this is to be done only after the said changes have been incorporated in the Recruitment Rules, through an amendment. For their own reasons, giving short shrift to this cardinal principle, the authorities have chosen to introduce a restrictive clause to the basic eligibility norms enshrined in the Recruitment Rules. This is illegal as well as perverse.

6. A reply statement has been filed on behalf of respondent nos.1 and 2.

It is argued that the stipulation of qualification and recognition of institutions are entirely different criteria. Since NCTE Act has become law, NCTE has become mandatory for every institution dealing with training in teacher education. Besides, the qualifications required for a particular post are within the sphere to be decided the employer. NCTE Act and Regulations are guiding principles while drafting Recruitment Rules. Without conceding the case of the applicants, it is maintained in the reply statement that “prescription of qualification can be only in accordance with Recruitment Rules irrespective of the fact whether it is in tune with NCTE Act or not.” A curious admission indeed !

7. The respondents have gone into NCTE Act 1993 in some detail specifically quoting from several clauses of the Act. Of particular interest, Section 16 of the Act which mandates the affiliating body to grant affiliation only after the institution concerned has obtained recognition from the Regional Committee concerned under Section 14 or permission for a course or training under Section 15. The course offered by an institution will not be valid if the said institution has not been recognised by NCTE. The Recruitment Rules provided qualification must be from a recognised University under NCTE. Hence, it cannot be contended that NCTE does not find a place in the Recruitment Rules and cannot be insisted upon. Rather the Recruitment Rules need not be specifying recognition by NCTE. Even without such a prescription, NCTE recognition is mandatory as per the

NCTE Act.

8. Heard Mr.Joby Cyriac, learned counsel for the applicants in O.A Nos.181/95/2015 and 181/101/2015 and Mr.S.Manu, standing counsel for the Lakshadweep Administration and Mr.N.Anilkumar,SCGSC, learned counsel for respondent no.3. We have considered all documents and pleadings made.

9. As already mentioned, the very same issue had been the subject matter of an earlier proceeding before this Tribunal. In Annexure A-4 order in O.A 191/00090/2015 filed by an applicant who possessed the NCTE eligibility norms, seeking to restrict the recruitment to those with similar qualifications, this Tribunal had decided as follows:

“8. Learned counsel for the respondents has relied upon the decision of the Hon'ble Supreme Court In **V.K.Sood v. Secretary, Civil Aviation and others** - 1993 Supp (3) SCC 9 in support of his submission that it is not for the Court or Tribunal to trench into and prescribe qualifications etc. It is for the rule making authority or for the legislature to regulate the method of recruitment, prescribe qualifications etc. **It is true that as per NCTE Act and the Regulation issued thereunder the qualifications were prescribed for Physical Education Teachers. But at the same time the appointment can be made only as per existing Recruitment Rules.** Till the Recruitment Rules are amended, for the vacancies which arose during the existing rules, those vacancies are to be filled up following the existing Recruitment Rules. It was held by the Supreme Court in **VK Sood's case** (supra):

'Thus it would be clear that, in the exercise of the rule making power, the president or authorised person is entitled to prescribe method of recruitment, qualifications both educational as well as technical for appointment or conditions of

service to an office or a post under the State. The rules thus having been made in exercise of the power under proviso to Art. 309 of the Constitution, being Statutory, cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit the stated individuals whose names have been mentioned in the appeal. Suffice to state that it is settled law that no motives can be attributed to the Legislature in making the law. The rules prescribed qualifications for eligibility and the suitability of the appellant would be tested by the Union Public Service Commission.'

The learned counsel for the respondents stated that the Apex Court in the decision cited supra held that the rules which were in force at that time cannot be impeached on the ground that the authorities have prescribed tailor made qualification in order to select their own persons. In view of the law laid down by the Supreme Court this Tribunal cannot encroach into that area to hold that the selection process done by the respondents following the existing rules is invalid or non est. The decision cited supra was followed by the Supreme Court in **Mohd. Sartaj and another v. State of UP and others** - AIR 2006 SC 3492.

9. In view of what is stated above the argument assiduously raised by the learned counsel for the applicant that the selection made as per the Recruitment Rules which was inconsistent and contrary to Annexure A4 Regulations mentioned earlier should be set at naught cannot be sustained. But the respondents must ensure that the Recruitment Rules are amended in tune with the Regulations (Annexure.A4), to fill up the future vacancies, lest the selection process should violate the provisions of NCTE Act and the Regulations (Annexure A4) issued thereunder.

10. OA is dismissed but with the observations as afore stated. No order as to costs.  
(emphasis supplied)

10. It is disappointing to note that, despite the clear direction of the Tribunal, respondent nos.1 & 2 chose to turn a 'Nelson's eye' to the issue of amending the Recruitment Rules and initiated steps for selection incorporating eligibility norms which could be fulfilled only after NCTE recognition. We have no quarrel with inclusion or exclusion of criteria of eligibility so long as the employer is particular about the same. But the latter



will necessary have to bring the Recruitment Rules in line with those amended criteria. In other words, it should be wrong on the part of the employer to proceed with selection through eligibility criteria which are at variance with those mentioned in the Recruitment Rules. This is clearly what has been done in the two Original Applications before us and from this perspective, the action of the respondent nos.1 & 2 deserves to be interfered with.

11. Both the Original Applications are allowed and the reliefs sought are granted in full. There shall be no action pursuant to the Employment Notice at Annexure A-1 for the reason that the qualification sought for is different from those which find a place in the existing Recruitment Rules. No costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

**List of Annexures**

**O.A 181/00095/2015**

Annexure A-1 - True copy of the Employment Notice F.No.6/7/2014-Edn.Estt.633, dated 18.8.2015 for the post of PET issued by the 1<sup>st</sup> respondent

Annexure A-2 - A true copy of the application dated 21.8.2015 of the applicant

Annexure A-3 - A true copy of the existing Recruitment rule namely "The Lakshadweep Administration, Education Department, Physical Education Teacher (Group C Non-Ministerial Post) Recruitment Rules, 2009"

Annexure A-4 - Copy of the order dated 6.11.2015 of this Hon'ble Tribunal in O.A No.181/0090/2015.

**O.A 181/00101/2015**

Annexure A-1 - True copy of the Employment Notice F.No.6/7/2014-Edn.Estt.633, dated 18/08/2015 for the post of PET issued by the 1<sup>st</sup> respondent

Annexure A-2 - A true copy of the existing Recruitment Rule namely "The Lakshadweep Administration, Education Department, Physical Education Teacher (Group C Non-Ministerial Post) Recruitment Rules, 2009"

Annexure A-3 - Copy of the order dated 6.11.2015 of this Hon'ble Tribunal in O.A No.181/0090/2015

Annexure A-4 - Copy of the interim order dated 19.11.2015 of this Hon'ble Tribunal in O.A No.181/0095/2015.

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