

**Central Administrative Tribunal  
Ernakulam Bench**

**OA/181/00039/2015**

Wednesday, this the 6<sup>th</sup> day of February, 2019.

**CORAM**

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

**Hon'ble Mr.Ashish Kalia, Judicial Member**

Asaf Pookoya A.K., aged 36 years  
S/o Late P. Pookoya  
Residing at Alilakkada House  
Kalpeni Island  
Union Territory of Lakshadweep-682 557.

Applicant

[Advocate: Mr. T.C.Govindaswamy]

***versus***

1. The Administrator  
Union Territory of Lakshadweep  
Lakshadweep Administration  
Kavaratti-682 555.
2. The Director (Services)  
Administration of the Union Territory of  
Lakshadweep (Secretariat)  
Kavaratti-682 555.
3. Union of India represented by  
the Secretary to the Govt of India  
Ministry of Home Affairs  
New Delhi-110 001.
4. Sri D.Karthikeyan  
Director (Services)  
Administration of the Union Territory of  
Lakshadweep (Secretariat)  
Kavaratti-682 555.

Respondents

**Advocate:**

[Mr. S.Manu for R1&2]

[Mr. N.Anilkumar, SCGSC for R3]

[Mr. S.Radhakrishnan for R4]

The OA having been heard on 22<sup>nd</sup> January, 2019, this Tribunal delivered the following order on 06.02.2019:

### **ORDER**

**By Ashish Kalia, Judicial Member**

The applicant, an ex-service Air Force employee and a native of Kalpeni Island, through this OA, seeks fair consideration of his candidature for appointment as Upper Division Clerk. He seeks the following reliefs:

*(i) Quash Annexure A7.*

*(ii) Direct the respondents to consider and grant the applicant appointment as UDC against a vacancy notified in terms of Annexure A6 duly finalizing the selection process in terms of Annexure A8 and direct further to grant all consequential benefits as ordered in Annexure A5 judgment of the Hon'ble High Court of Kerala.*

*(iii) Direct the respondents to pay arrears of pay and allowances for the period 1.4.2015 to be recovered from the 4<sup>th</sup> respondent who is responsible for the issuance of Annexure A7 notification.*

The applicant enrolled in the Air Force on 5<sup>th</sup> September, 1995 and was discharged on 31.05.2013 as Sergeant Parachute Jump Instructor. The training and experience, gained by the applicant, is equivalent to Bachelor of Physical Education and also to that of graduation. Annexure A1 is produced to indicate that the applicant's qualification is equivalent to BP Ed. The applicant had applied for the post of UDC against 10% reserved quota in response to Employment Notice dated 16.08.2013 (Annexure A3). The applicant was declared disqualified since he did not fall within the notified age limit, upon which the applicant had approached this Tribunal by filing OA No.1110 of 2013. That OA was allowed as per Annexure A4 and directed the respondents to exercise its powers in favour of the applicant by considering him among the selected candidates and issue an appointment order within one month. This was

challenged by the respondents before the Hon'ble High Court of Kerala by filing OP (CAT) No.166 of 2014. The order passed by this Tribunal was set aside by the Hon'ble High Court. It is further directed that separate notification inviting application for the post of UDC and to similar grades reserving adequate number of vacancies to ex-servicemen and to other reserved categories, if any, and complete the recruitment in pursuance thereof at any rate within three months from the last date of receipt of application in response to the notification. Pursuant to the direction by the Hon'ble High Court, the respondents further issued notification on 18.2.2015. It was proposed by the respondents that they would conduct an examination of graduate standard which is questioned by the present applicant on the ground that it is opposed to the procedure invoked for recruitment of ex-servicemen decided by the Administrative Reforms Committee in terms of its decision contained in the minutes of its meeting held on 2.2.2009 (Annexure A8). Feeling aggrieved by the action of the respondents, applicant has approached this Tribunal seeking appointment to the post of UDC.

2. Notices were issued to the respondents. Respondents 1 and 2 have filed reply statement in which it is contended that as far as ex-servicemen are concerned, as per Annexure A2 ex-servicemen who are matriculates and have put in not less than 15 years of service in the Armed Force of Union are to be considered for appointment to any reserved vacancy for which the essential qualification is graduation. The applicant is having the equivalent certificate. But these ex-servicemen having these qualifications are not having any marks. Therefore, on the basis of Annexure R1(a) norms of selection, it is impossible to ascertain the suitability or comparability merit of ex-servicemen. Therefore, it was decided that a separate selection criteria is to be evolved for appointment of

ex-servicemen in the reserved category. Hence, vacancies set apart for ex-servicemen were not mentioned in the general notification dated 16.8.2013 and the decision was to issue separate notification for other eligible categories.

The respondents have ultimately prayed for dismissal of the OA.

3. Heard learned counsel for the parties at length.

4. The point raised in the OA is whether the Ex-serviceman having certificate of Bachelor of Physical Education, after 15 years service with the Military can be considered against 10% reserved post. In the present application, this Tribunal had considered this aspect and directed the respondents to consider appointing the applicant in the vacancy reserved for ex-servicemen.

5. It transpires from the above judgment of the High Court that the direction was to give a fresh opportunity to the candidates by issuing fresh notification. No method for selection had been directed by Hon'ble High Court. Even otherwise, it is the prerogative of the administration to see the suitability or efficiency of the candidates for the post for which he is seeking appointment. The respondents are not denying the appointment to the applicant for which they had directed the applicant to appear for a written test to prove his efficiency in drafting the daily note sheets and understanding, which is required for day to day administration. In our considered view, the respondents can evolve such system for recruiting ex-servicemen. Govt of India Reforms Committees have never envisaged any particular method for giving selection to the ex-servicemen. In other words, they can be recruited without the process of examination in such posts where it is not really required such the security post, other than in administrative interest.

6. Thus, in view of the above, we find no infirmity in the action of the respondents for conducting examination for recruitment to the post of UDC under 10% reservation. The OA being devoid of merit is dismissed. No order as to costs.

(Ashish Kalia)  
Judicial Member

(E.K.Bharat Bhushan)  
Administrative Member

aa.

**Annexures filed by the applicant:**

- Annexure A1: Copies of the certificate jointly issued by the Wing Commander and also the Commanding Officer of the PTS Air Force dated 14.2.2012.
- Annexure A2: Copy of the certificate dated 18.10.2012 issued by the Indian Air Force.
- Annexure A3: Copy of the Employment Notice F.No.12/03/2006-Services Vol.II/3073 dated 16.8.2013.
- Annexure A4: Copy of the order in OA No.1110 of 2013 dated 5<sup>th</sup> September 2014, rendered by this Tribunal.
- Annexure A5: Copy of judgment in OP(CAT) No.166 o 2014 (Z) dated 14<sup>th</sup> Nov, 2014 rendered by the Hon'ble High Court of Kerala.
- Annexure A6: Copy of notification bearing F.No.12/03/2006-Services (Vol.II)/3888 dated 01.12.2014.
- Annexure A7: Copy of letter bearing F.No.12/3/2006-Services (Part) dated 18.2.2015 issued by the 2<sup>nd</sup> respondent.
- Annexure A8: Copy of minutes of the meeting held on 2.2.2009 by the Administrative Reforms Committee.
- Annexure MA1: Copy of reply statement dated 30 march 2015 filed by Shri Ashok Kumar, 3<sup>rd</sup> respondent.
- Annexure MA2: Copy of reply statement dated 4.3.2014 in OA No.1110/2013 filed by the respondents 1 & 2.
- Annexure MA3: Copy of reply statement dated 23.7.2014 filed by respondents 1 & 2 in MA No.181/0043/2014 in OA No.1110/2013 along with its annexures.
- Annexure MA4: Copy of Memo filed by the counsel for the respondents dated 30.8.2014 along with its annexures in OA No.1110/2013.
- Annexure MA5: Copy of OP(CAT) No.166/2014 dated 28.10.2014 filed by the respondents, less its annexures (except P6 and P8) before the Hon'ble High Court of Kerala.
- Annexure MA6: Copy of certificate dated 21 February, 2013, issued in favour of Sri Koya Mathil by the competent authority of the Indian Army

**Annexure filed by respondents:**

- Annexure R1(a): Copy of the order F.No.12/37/2005-Services dated 28.4.2007.