

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 181/00728/2016

Monday, this the 24th day of December, 2018

CORAM:

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

C.P. Mullakoya, S/o. Akkare Muthukoya, age 60 years,
 Retired as Subject Matter Specialist, Krishi Vigyan Kendra,
 Farm Science Centre, Kiltan Island,
 UT of Lakshadweep. **Applicant**

(By Advocate : Mr. M.P. Krishnan Nair)

V e r s u s

1. The Administrator, UT of Lakshadweep, Kavarathi – 682 555.
2. The Director of Agriculture, Directorate of Agriculture, UT of Lakshadweep, Kavarathi – 682 555.
3. The Secretary, Agriculture Dept., Lakshadweep Admn., Kavarathi – 682 555.
4. Union Public Service Commission, represented by its Secretary, Dholpur House, Shahjahan Road, New Delhi- 110 069. **Respondents**

**[By Advocates : Mr. S. Manu (R1-3),
 Mr. Millu Dandapani (R4)]**

This application having been heard on 12.12.2018 the Tribunal on 24.12.2018 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“i) To call for the entire records of the applicant's case leading to the issue of Annexure A-4, A-5, A-8 and A-10 and set aside the same;

- ii) To declare that the issuance of Annexure A-4, A-5, A-8 and A-10 are highly illegal, arbitrary, malafide in nature, discriminatory in character, ab initio void, unjust, unfair unreasonable and unsustainable and liable to be set aside in toto;
- iii) To declare that the applicant being 2nd in the select list of 2003 for the post of Coconut Development Officer, is entitled to be promoted to the post of Coconut Development Officer with effect from the date on which the vacancy of Coconut Development Officer arose due to the death of Dr. Hamsakoya;
- iv) To declare that the entire action of the respondents 1 to 4 in not considering and promoting the applicant on deputation on the basis of the judgment and orders of the Hon'ble High Court in Annex. A-1 to A-3 and repatriating him to the alleged parent department and posted as Agricultural Demonstrator and retiring him on 30.6.2015 as Agricultural Demonstrator thereby denying and defeating his actual promotion to the post of Coconut Development Officer with effect from the date of death of Dr. Hamsakoya who was promoted and appointed and continued working as Coconut Development Officer and also to give all the eligible payment of salary and allowances on the basis of the above promotion and all other arrears and consequential services benefits and monetary benefits with interest at market rate;
- v) To direct the respondents 1 to 4 to select and appoint the applicant to the post of Coconut Development Officer with effect from the date on which vacancy of Coconut Development Officer arose due to the death of Dr. Hamsakoya, who was also selected along with the applicant in 2003 being No. 1 in the select list, and also give the applicant all service benefits and consequential benefits with all protection of respective scale of pay and salary for which he is entitled;
- vi) To direct the respondents 1 to 3 to forward all the necessary documents in respect of the applicant for the appointment to the post of Coconut Development Officer to the 4th respondent as per the direction of the Hon'ble High Court in OP (CAT) No. 3147/2011 forthwith;
- vii) To direct the 4th respondent to consider the applicant of the applicant for the post of Coconut Development Officer as forwarded by the respondents 1 to 3 and pass fresh appointment order on the basis of the judgment and orders of the Hon'ble High Court in OP (CAT) No. 3147/2011 and appoint the applicant to the post of Coconut Development Officer in the Department of Agriculture of the Union Territory of Lakshadweep with effect from the date on which vacancy of Coconut Development Officer arose due to the death Dr. Hamsakoya;
- viii) To direct the respondents 1 to 4 to give his retirement benefit considering his selection and appointment to the post of Coconut Development Officer with effect from 29.6.2015 and treating his promotion from the date on which vacancy of Coconut Development Officer arose due to the death of Dr. Hamsakoya and also give all retirement benefits and consequential benefits with all protection of respective scale of pay and salary for which he is entitled;
- ix) To direct the respondents to act accordingly to law and not to harass and victimize the applicant deliberately and willfully thereby denying the legitimate right of the applicant to get promotion to the post of Coconut

Development Officer with effect from the date on which Dr. Hamsakoya died and also get retirement benefit as Coconut Development Officer with all service benefits and consequential monetary benefits.

x) to pass any other appropriate order or orders, direction or directions which are deemed fit and proper in the facts and circumstances of the case;

xi) to award cost of this proceeding to the applicant.”

2. The applicant was appointed as an Agriculture Demonstrator in 1981 in the Department of Agriculture under the Lakshadweep Administration. While he was continuing as such a circular dated 25.9.1998 was issued for filling up various posts including the post of Training Associate (Soil Conservation) in the scale of pay of Rs. 8,000-13,500/- in Krishi Vigyan Kendra (in short KVK) by transfer from the Departments of Fisheries, Agriculture and PWD for a period of one year initially. The service conditions of the staff selected for the KVK will be like transfer from one department to another, but with the KVK scale without fixation benefits. The qualification for the post was Masters Degree in Agriculture with specialization in Soil Science with minimum ten years working experience in Horticulture Crops. The applicant applied for the post and was called for the interview and was selected by the selection committee for appointment to the post of Training Associate (Soil Conservation). Thereafter, applicant was appointed as Training Associate (Soil Conservation) in KVK in the scale of pay of Rs. 8,000-13,500 as per order dated 1.1.1999. The appointment of the applicant was initially for a period of one year with effect from the date of joining the post and further continuation would be allowed based on the satisfactory performance of the incumbent in the post. The applicant was allowed to continue in the post of Training Associate

(Soil Conservation) in KVK up to 31.03.2000. The said post of Training Associate was subsequently re-designated as Subject Matter Specialist. The post of Coconut Development Officer is a post in the hierarchy of the Department of Agriculture under the Lakshadweep Administration which carries a pay scale of Rs. 8,000-13,500/- as that of the Subject Matter Specialist in KVK. The post of Coconut Development Officer has to be filled up in consultation with the UPSC by promotion/transfer on deputation (including short term contract) failing which by direct recruitment. The vacancy of Coconut Development Officer arose with effect from 1.1.1999 due to the appointment of the then Coconut Development Officer as Training Organizer. As per letter dated 7.2.2003 applications were invited for appointment to the post of Coconut Development Officer. The applicant and others applied for the said post. Dr. C.P. Hamsakoya was ranked No. 1 and the applicant was ranked No. 2 in the select list. Dr. C.P. Hamsakoya was appointed as Coconut Development Officer. The appointment of Dr. C.P. Hamsakoya was challenged by four persons in OA No. 79 of 2006 before this Tribunal. The OA was allowed by quashing the appointment of Dr. C.P. Hamsakoya. Dr. C.P. Hamsakoya challenged the said order in OA No. 79 of 2006 before the Hon'ble High Court in WP(C) No. 12983 of 2007. The Hon'ble High Court by an interim order allowed Dr. C.P. Hamsakoya to continue on deputation in the post of Coconut Development Officer until further orders. During the pendency of that Writ Petition Dr. C.P. Hamsakoya expired on 21.5.2008 and therefore, the Writ Petition was dismissed as abated. Subsequently, the respondents issued circular dated 22.9.2008 inviting fresh applications for appointment to the post of Coconut

Development Officer on deputation basis from the officers of the Central/State Government/Union Territories/Agricultural Universities or Research Institutions/Councils. The applicant submitted his application dated 22.10.2008. However, the respondents did not forward that application to respondent No. 4. The 2nd respondent vide OM dated 22.1.2009 requested the applicant to submit fresh application along with relevant documents. The applicant submitted a fresh application. But that also was not forwarded to respondent No. 4. Aggrieved the applicant has filed OA No. 362 of 2009 before this Tribunal. The OA was disposed of directing the respondents to consider the representation of the applicant. The respondents issued employment notice dated 7.9.2009 inviting applications for appointment to the post of Coconut Development Officer by way of direct recruitment. The applicant preferred representation dated 30.9.2009 to the 1st respondent requesting him to intervene in the matter and withdraw employment notice dated 7.9.2009 and forward his application to respondent No. 4. Since no action was taken in the matter applicant preferred OA No. 777 of 2009 before this Tribunal. After hearing, this Tribunal dismissed OA No. 777 of 2009 through a common order dated 19.7.2011. The applicant being aggrieved preferred an OP (CAT) No. 3147 of 2011. After hearing the Hon'ble High Court allowed the OP(CAT) on 20.5.2015 as under:

“21. For the foregoing reasons, the petitioner is entitled to succeed in this Original Petition. Ext.P16 Employment Notice dated 07-09-2009 is liable to be quashed. Ext.P21 order passed by the learned CAT in O.A. No.777 of 2009 is liable to be set aside.

In the result :

- (i) Ext.P16 Employment Notice dated 07-09-2009 is quashed.

(ii) Ext.P21 order dated 19-07-2011 in O.A. No.777 of 2009 of the CAT is set aside.

(iii) It is declared that the petitioner is entitled to be considered for appointment to the post of Coconut Development Officer in the Department of Agriculture in the existing vacancy that arose due to the death of Dr. C.P.Hamsakoya.

(iv) The concerned respondent in the establishment shall forward the application submitted by the petitioner for appointment to the post of Coconut Development Officer in the Department of Agriculture to the Union Public Service Commission forthwith. If the application of the petitioner is not forwarded to the Union Public Service Commission within a period of 7 days after the receipt of a copy of this judgment, the petitioner shall be given appointment to the post of Coconut Development Officer in the Department of Agriculture forthwith.

(v) The petitioner shall produce a copy of this judgment before the concerned respondent in the establishment for compliance.

This O.P.(CAT) is allowed as above.”

Since the respondents have not complied with the directions in OP (CAT) No. 3147 of 2011 applicant filed IAs Nos. 7994/2015, 7995/2015, 7996/2015 and 8458/2015. After hearing the IAs the Hon'ble High Court passed the following order:

“For the aforesaid reasons, it is ordered directing that while the establishment will be at liberty to forward to the Union Public Service Commission all papers including the papers relating to the disciplinary proceedings which, according to the establishment, are pending, the petitioner is eligible to be appointed as Coconut Development Officer in the Department of Agriculture forthwith provisionally and subject to the decision of the UPSC. If the petitioner is not so appointed and posted in terms of the directions contained in this order, he shall be treated as appointed as Coconut Development Officer on 29.6.2015 for all intents and purposes, provisionally and subject to the decision of the Union Public Service Commission. We further direct that disciplinary proceedings shall not be carried on unless the UPSC concludes on the matter, and the direction issued as per Ext. P-49 requiring the petitioner to appeal for disciplinary proceedings shall not be insisted upon.”

As the respondents have not complied with the judgment and orders passed by the Hon'ble High Court the applicant filed Contempt Case No. 1896 of 2015. During the pendency of the contempt case the applicant retired from service on 30.6.2015. However, the Hon'ble High Court while closing the

contempt case observed as under on 4.8.2016:

“We are of the view that we should necessarily dissuade ourselves from doing so thereby paving way to the petitioner seeking any further relief as may be possible from the Tribunal in the light of the contentions of the judgment dated 20.5.2015 and order dated 26.6.2015 from the Central Administrative Tribunal in terms of the provisions of the Central Administrative Tribunal Act and rules made thereunder. Also will stand open the right if any of the petitioner to challenge the decision of UPSC in accordance with law. Leaving open all such issues and noticing that no contempt of court cognizable in terms of the provisions of the Contempt of Court Act has been established, this case is closed.”

The respondents filed SLP (CC) No. 19927 of 2015 on 22.9.2015 against the judgment of the Hon'ble High Court in OP (CAT) No. 3147/2011. After hearing the Hon'ble Supreme Court observed as under:

“Since the respondent has retired from service, we are not inclined to interfere with the orders passed by the High Court, in exercise of our jurisdiction under Article 136 of the Constitution of India.

We make it clear that the impugned judgment and orders shall not be treated to precedent since we are leaving the question of law open.

Subject to the above, the Special Leave Petition is disposed of.”

Respondent No. 4 rejected the application of the applicant vide letter dated 28.7.2016 stating that applicant has not rendered 3 years regular service as Plant Protection Officer and that he is not eligible for consideration on deputation basis as his parent office has not given integrity certificate, vigilance certificate, cadre clearance and major minor penalty certificate for deputation. Further he is already serving on deputation against the post of Training Associate in KVK, Kiltan w.e.f. 8.1.1999 and as per the Recruitment Rules for the post of Coconut Development Officer the period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organization Department of the Central Government shall not exceed three years. Applicant has already completed the ordinary deputation term and

hence cannot be considered for another term of deputation without completing the mandatory cooling off period. Aggrieved the applicant has filed the present OA.

3. Notices were issued to the respondents. They entered appearance through Shri S. Manu for respondents Nos. 1-3 and Mr. Millu Dandapani, learned counsel for respondent No. 4. Respondents Nos. 1-3 filed a reply statement contending that the applicant was appointed as Soil Analyst in the Agricultural Administration unit at Kadamath in the scale of pay of Rs. 4,500-7,000/- (revised 5200-20,200/- plus Rs. 2,800/- GP) by direct recruitment on regular basis. Later he got appointed as Training Associate in KVK, Kiltan in the scale of pay of Rs. 8,000-13,500/- with effect from 8.1.1999. KVK was a joint venture of the Indian Council of Agriculture Research and Lakshadweep Administration. Therefore, the employees of the administration are spared to work in KVK and will remain to continue as employees of the administration for all purposes. The applicant while working as Subject Matter Specialist was repatriated to his parent department in the Lakshadweep Administration as Soil Conservation Assistant vide order dated 26.6.2015 since he was due to retire on 30.6.2015 on attaining the age of superannuation and to facilitate settlement of his pensionary benefits since no provision for incurring expenditure on pension is available in KVK. The repatriation is necessary in the case of the applicant so as to provide him pension and also the terminal benefits as he is an employee of the administration who is spared to work in KVK. As per the judgment of the Hon'ble High Court in OP (CAT) No. 3147 of 2011 the

case of the applicant was referred to UPSC. However, the UPSC vide letter dated 28.7.2016 informed this respondent that applicant is not eligible for holding the post of Coconut Development Officer as the said post is a selection post and to be filled up by the UPSC. The respondents further submitted that to become eligible for appointment as Coconut Development Officer, three years experience in the feeder post of Plant Protection Officer is required. The post of Plant Protection Officer is a promotion post of Agricultural Officer. The applicant being a Soil Conservation Assistant is not at all eligible to get appointed as Coconut Development Officer as he was not in the feeder category. In fact he was two steps below the feeder category. It is further submitted that the applicant as well as other employees who were spared to work in KVK enjoy higher pay and other benefits than that to which they are entitled to, had they continued in their parent Department under the Lakshadweep Administration. The applicant and other employees who were spared to work in KVK will continue as employees of the administration for all purposes. The proposal for granting the applicant provisional pension is in the final stage and the same will be submitted to the Pay & Accounts Office within a short time by the Directorate of Agriculture. Respondents pray for dismissing the OA.

4. Respondent No. 4 also filed a reply statement contending that the contention of the applicant that he was ranked 2nd in the eligibility test and interview conducted by the UPSC for the post of Coconut Development Officer is not true. The fact is that the applicant was one of the shortlisted eligible candidate who attending the selection committee meeting along

with two other candidates. The committee recommended Dr. C.P. Hamzakoya for the post and no reserve panel was drawn by the selection committee. As per the Recruitment Rules for the post of Coconut Development Officer the Departmental Plant Protection Officer with three years service is to be considered for promotion to the post of Coconut Development Officer and in case of his selection to the said post the post of Coconut Development Officer shall be deemed to have been filled by promotion since the applicant has not rendered three years regular service as Plant Protection Officer, he is ineligible for consideration on promotion basis. The candidature of the applicant for appointment to the post of Coconut Development Officer on deputation basis could not be considered as his parent office did not furnish his integrity certificate, vigilance certificate, cadre clearance and major minor penalty certificate for deputation and also that he had not completed mandatory cooling off period of three years for proceeding to another deputation. The applicant was already serving on deputation beyond normal deputation period of 3 years against the post of Training Associate in KVK, Kiltan since 8.1.1999.

5. Heard Shri M.P. Krishnan Nair, learned counsel appearing for the applicant, Shri S. Manu, learned counsel for respondents Nos. 1-3 and Shri Millu Dandapani, learned counsel for respondent No. 4. Perused the records.

6. The question posed before this Tribunal by the applicant herein is that whether the applicant is entitled to be appointed to the post of Coconut

Development Officer when he was holding the post of Subject Matter Specialist. The Hon'ble High Court in paragraphs 10 & 11 of the judgment dated 20.5.2015 in OP (CAT) No. 3147 of 2011 had considered the issue that whether the applicant is holding analogous post to that of Coconut Development Officer and held as under:

“10. The arguments of the establishment against the claims of the petitioner are briefly as follows: The post of Subject Matter Specialist occupied by the petitioner in the KVK is not analogous to the post of CDO. Therefore, he is not eligible to be considered for the post of CDO as per the Rules. The petitioner is still in the regular post of Agriculture Demonstrator in the Department of Agriculture which is a feeder category for promotion to the post of Agricultural Officer. Agricultural Officer is the feeder category for promotion to the post of Plant Protection Officer. Plant Protection Officer is the feeder category for promotion to the post of CDO. Since the petitioner is only an Agriculture Demonstrator in the Department of Agriculture and he is in the direct line of promotion in the Department, he is not eligible to be considered for appointment on deputation as per the Rules. He is occupying the post of Subject Matter Specialist in the KVK on a deputation basis. A deputationist is not eligible for further deputation as CDO.

11. We shall first consider whether the post of Subject Matter Specialist is analogous to the post of CDO in the Department of Agriculture. Both these posts belong to Group-A. They carry similar scales of pay, namely, Rs. 8000- 13500. The qualifications prescribed for direct recruits to the post of CDO are (1) Degree in Agriculture followed by Post Graduate Degree in any field of Agricultural Science or M.Sc. Degree in Botany of a recognized University or equivalent and (2) three years experience in agricultural development or extension or research with particular reference to coconut crops. The petitioner possesses (1) B.Sc. (Agriculture) and (2) M.Sc. (Agriculture) with specialisation in Soil Science and Agriculture Chemistry. The qualification of experience has been narrated in detail in Ext.P11 application submitted by the petitioner which would go to show that he possesses the required and more experience. Therefore, it is quite evident that the petitioner possesses the required educational and experience qualifications prescribed for direct recruitment to the post of CDO. But, he is not eligible to apply for direct recruitment as he does not satisfy the age limit. The qualifications thus possessed by the petitioner indicate that he is well qualified for occupying the post of CDO.”

The qualifications prescribed for direct recruits to the post of Coconut Development Officer are (1) Degree in Agriculture followed by Post Graduate Degree in any field of Agricultural Science or M.Sc. Degree in Botany of a recognized University or equivalent and (2) three years

experience in agricultural development or extension or research with particular reference to coconut crops. The applicant possesses (1) B.Sc. (Agriculture) and (2) M.Sc. (Agriculture) with specialisation in Soil Science and Agriculture Chemistry. The qualification of experience submitted by the petitioner would go to show that he possesses the required and more experience. Therefore, it is quite evident that the petitioner possesses the required educational and experience qualifications prescribed for direct recruitment to the post of CDO. But, he is not eligible to apply for direct recruitment as he does not satisfy the age limit. Secondly, the Hon'ble High Court held that the appointment of the applicant cannot be an appointment on deputation and can only be an appointment by transfer from one department to another department. Accordingly, the Hon'ble High Court directed for consideration of his application. But it does not mean that the Hon'ble High Court has held that the applicant should be appointed as Coconut Development Officer against the vacancy of Dr. C.P. Hamsakoya. The mere declaration that he is holding analogous post comparable to the post of Coconut Development Officer does not give him any legal right to get that post, because it is the domain of the executive to post the suitable person on a particular post after due selection process as per the Recruitment Rules. The Union Public Service Commission had rejected his application stating that as per the Recruitment Rules for the post of Coconut Development Officer the Departmental Plant Protection Officer with three years service is to be considered for promotion and the applicant has not rendered three years regular service as Plant Protection Officer. Therefore, he is ineligible for consideration on promotion basis. Further the

candidature of the applicant for appointment to the post of Coconut Development Officer on deputation basis could not be considered as his parent office did not furnish his integrity certificate, vigilance certificate, cadre clearance and major minor penalty certificate for deputation and also that he had not completed mandatory cooling off period of three years for proceeding to another deputation. The applicant was already serving on deputation beyond normal deputation period of 3 years against the post of Training Associate in KVK, Kiltan since 8.1.1999. Thus, in view of the above the applicant fails to convince us on merit that he is entitled to get the post of Coconut Development Officer in the pay scale of Rs. 8,000-13,500/.

7. We are of the view that the Original Application is devoid of merits and is liable to be dismissed. Hence, the OA is dismissed. There shall be no order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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

“SA”

Original Application No. 181/00728/2016**APPLICANT'S ANNEXURES**

Annexure A1 - True copy of the judgment dated 20.5.2015 in OP (CAT) No. 3147/2011.

Annexure A2 - True copy of the order dated 20.9.2012 in OA NO. 684/2011.

Annexure A3 - True copy of the orders dated 26.6.2015 in IA Nos. 7994/15, 7995/15, 7996/15 and IA No. 8458/15 in OP (CAT) No. 3147/2011.

Annexure A4 - True copy of the order dated 26.6.2015 of the 3rd respondent.

Annexure A5 - True copy of the order dated 30.6.2015 issued by the 2nd respondent.

Annexure A6 - True copy of the affidavit filed by the UPSC in Contempt Petition No. 1896/15 in OP (CAT) No. 3147/2011.

Annexure A7 - True copy of the additional affidavit filed by the applicant in Contempt Petition No. 1896/15 in OP (CAT) No. 3147/2011.

Annexure A8 - True copy of the letter/order dated 28.7.2016 issued by the UPSC.

Annexure A9 - True copy of the order dated 4.8.2016 in Contempt Petition No. 1896/15.

Annexure A10 - True copy of the last pay certificate of the applicant issued by the Programme Coordinator I/C and Senior Scientist & Head of UT of Lakshadweep.

Annexure A11 - True copy of the order dated 1.12.2016 issued by the 2nd respondent.

Annexure A12 - True copy of the office order dated 27.12.2013 issued by the KVK.

Annexure A13 - True copy of the order F.No. 33/4/2006-Agri

dated 7.9.2007 issued by the 1st respondent.

RESPONDENTS' ANNEXURES

Annexure R-I - True copy of office memorandum No. AB-14017/71/89-Estt.(RR) dated 3.10.1989.

Annexure R-II - True copy of letter of the 4th respondent to the Secretary, Union Territory of Lakshadweep, vide F.No. 9/35(11)/2015-ADT.2 dated 16.6.2015.

Annexure R-III - True copy of letter of the 4th respondent to the Secretary, Union Territory of Lakshadweep, vide F. No. 3/35(5/2016-ADT.2 dated 1.3.2016.

Annexure R-IV - True copy of letter vide F. No. 33/6/2015-Agri dated 23.6.2016 of the 2nd respondent to the 4th respondent.

Annexure R-V - True copy of letter of the 4th respondent to the 3rd respondent vide F.No. 3/35(5/2016-ADT.2 dated 28.7.2016.

Annexure R-1(a)- Photocopy of the order NO. 37/4/98-Agri(KVK) dated 17.7.1998.

Annexure R-1(b)- Photocopy of the reply dated 23.6.2004 from ICAR.

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