

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**ORIGINAL APPLICATION NOS. 181/00942 of 2016
& 181/00416/2017**

Tuesday, this the 20th day of August, 2019

CORAM

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

O.A No.181/00942/2016

Abdul Salam PBC
S/o.A.C.Sayed
Puthiyaniyachetta
Amini Island
Union Territory of Lakshadweep
Pin – 682 552

... Applicant

(By Advocate Mr.Ziyad Rahman)

Versus

1. Union Territory of Lakshadweep
Represented by its Administrator
Administration of Union Territory of Lakshadweep
Secretariat, Kavaratti – 682 555
2. The Secretary
Department of Education
Administration of Union Territory of Lakshadweep
Kavaratti – 682 555
3. The Director of Education
Directorate of Education
Administration of Union Territory of Lakshadweep
Kavaratti 682 555

4. The Director (Services)
Secretariat – Establishment Section
Lakshadweep Administration
Kavaratti Island
Pin 682 555

..... Respondents

(By Advocate Mr.S Manu)

O.A No.181/00416/2017

Nizar B.P
Bangalapura House
Bitra Island
U.T of Lakshadweep

... Applicant

(By Advocate Mr.P.E.Sajal)

Versus

1. The Administrator
U.T of Lakshadweep
Kavaratti-682 555

2. The Director of Education
U.T of Lakshadweep
Kavaratti – 682 555

..... Respondents

(By Advocate Mr.S Manu)

These above applications having been finally heard on 6.8.2019, the Tribunal on 20.8.2019 delivered the following:

ORDER

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

Since a common issue has to be adjudicated in these two Original

Applications under consideration and since the factual situations in these cases are almost identical, we feel that it is convenient to dispose of these cases by a common order. For the sake of convenience, pleadings and the documents contained in Original Application No.181/00942/2016 are referred to in this common order.

2. The applicants are aggrieved by Annexure A-1 Employment Notice published by the respondents inviting applications for filling up 12 posts of Fisherman, without reserving any vacancy to the physically disabled persons.

3. The brief facts of the case in O.A 942/2016 are as under:

The applicant is a person having 70% disability on account of hearing impairment. Medical certificates in this regard are produced as Annexure A-2. The applicant completed SSLC in the year 2005 and also completed Fishermen Training Course from Fishermen Training Centre, Amini in the year 2009. The applicant came across Annexure A-1 notification and it is noticed that no vacancy was set apart for the persons with physical disability. Applicant submits that as per Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, it is mandatory for Government to appoint in every establishment, not less than three percentage of the vacancies, persons with physical impairments and as per Section 36 of the Act, percentage of

vacancies mentioned in Section 33 is in respect of every recruitment year. By mentioning the recruitment of 2011, applicant submits that out of 6 vacancies notified in that year, one was specially reserved for PH candidates. Applicant alleges that failure of the respondents to identify posts fit for reservation of PH candidates amounts to curtailment of the rights of the applicant and other similarly situated persons. Applicant has submitted Annexure A-4 representation before the respondents. However, that was not responded to.

4 Applicant further submits that Annexure A-1 was issued on the basis of Annexure A-5 circular issued by the Director (Services) of Lakshadweep Administration and Annexure A-5 has been issued based on the vacancy position pertaining to the year 2016 alone and the vacancies pertaining to the previous years were not taken into consideration.

5 As grounds, applicant submits that 3% reservation for physically disabled persons is contemplated under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the respondents are duty bound to set apart sufficient number of vacancies arising in a recruitment year for accommodating PH persons. Hence, there is no justification on the part of the respondents in not earmarking any vacancy of Fisherman for PH candidates. Aggrieved by the same, applicant has approached this Tribunal

praying for the following reliefs:

“ (i) To set aside the Annexure A1 employment notice and A5 circular, to the extent of not earmarking any vacancies for persons with physical disabilities.

(ii) To direct the respondents 1 to 3 to issue fresh Employment notice, for filling up the vacancies of Fisherman, by setting apart sufficient number of posts for physically disabled persons in compliance of Section 33 and 36 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

(iii) Such other reliefs that this Tribunal may deem just, fit and proper in the facts and circumstances of the case. ”

6 In O.A 180/00416/2017, applicant is having 40% disability and has passed SSLC along with the Fisherman Training Course conducted by the Fisheries Department of Lakshadweep Administration. Here also the applicant is challenging the employment notice issued by the respondents. The applicant participated in the written test. The applicant also submitted Annexures A-7 and A-8 representations. But, he was not selected. Hence he approached this Tribunal.

7 Respondents have filed a reply statement. It is stated therein that the Services Department of the Union Territory of Lakshadweep issued guidelines for filling up of the posts identified as suitable for persons with

disabilities under the Lakshadweep Administration as per order dated 14.9.2015 in pursuance of the judgment dated 8.10.2013 of the Hon'ble Supreme Court of India in the decision *Union of India and another v. National Federation of Blind and others* and DOPT O.M dated 3.12.2013 and 20.3.2014 as also the report of the committee constituted by the Administrator in this regard. As per the guidelines, the entire Lakshadweep Administration shall be considered as a single establishment for computing reservation for persons with disabilities. The Services Department is expected to act as a nodal department for implementing the DOPT instructions. Based on the guidelines, Department of Education reported the total number of vacancies for direct recruitment for the year 2016. Among other vacancies reported, the Department also reported 12 posts of Fisherman for direct recruitment for the year 2016. Accordingly, for the year 2016, 4 posts under the Department of Education were identified for persons with disabilities. No posts of Fisherman have been identified by the Services Department for filling up with PH candidates for the year 2016 (Annexure R1(c)). Respondents submit that unless and until Annexure R1(c) is modified to the extent it reserves posts other than that of Fisherman for filling up with the persons with disabilities, the applicant is not entitled to succeed in the O.A. Hence the respondents pray for dismissal of the Original Application.

8 In O.A 416/2017, the respondents submit that in the written test conducted by the respondents, the applicant's position was 176 in the merit list. As per the recommendations of the Recruitment Committee held on 10.7.2017, the Department issued offer of appointment to 12 selected candidates in the category of Fisherman and the applicant was not selected.

9. Heard Mr.Ziyad Rahman, learned counsel for the applicant and Mr.S.Manu, learned Standing Counsel for the respondents and perused the records.

10. We have gone through all pleadings, both oral and documentary. There is no ambiguity on the part of the employer, which is the Government, as regards the responsibility bequeathed upon them under **Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**. Section 33 of the Act provides for 3% reservation for all appointments. In the two Original Applications being considered here, the controversy is with respect to Annexure A-1 notification (in O.A 942/16) which invites applications for recruitment to 12 Fishermen vacancies among others. The applicants in these two Original Applications are pressing their case that in the vacancies notified, 3% reservation for Physically Handicapped persons are not indicated. In the reply statement, the respondents have submitted that the Services Department is the nodal

department for co-ordinating all recruitment and adherence to quota as in this case is monitored by that department. In so far as the Education Department is concerned, the point made by the applicant that no reservation of 3% is mentioned for Fishermen is countered by stating that several vacancies for 2016 itself have been specifically earmarked for PH candidates as is clear from Circular dated 10.6.2016 submitted as Annexure R1(d) in O.A 416/2017. On examining the same, we see that these posts have been identified for Group B & C under the Education Department as per allotted roster points. It is submitted by the respondents that the identification of a specific post is to be made by the concerned department and this has been fulfilled by the Education Department as is seen in the Circular referred to at Annexures R1(c), R1(d) and R1(e). The applicants cannot claim that reservation should be extended to the particular category to which they belong.

11. Under the circumstances, we see no merit in the case made out in these two Original Applications and both are dismissed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

O.A 942/16

Annexure A1 - True copy of the Employment Notice bearing F.No.18/18/2015-Edn/Estt(1) dated 4.7.2016

Annexure A2 - True copy of the medical certificate bearing no.1086/2016 dated 5.4.2016

Annexure A3 - True copy of the employment notice bearing F.No.1/1/2011-Fy/588 dated 1.4.2011

Annexure A4 - True copy of the aforesaid representation dated 14.8.2016

Annexure A5 - True copy of the Circular bearing F No.F.No.01/01/2014-Estt/2288 dated 23.6.2016

Annexure R1(a) - True copy of the order F.No.01/01/2014-Estt/2893 dated 14.9.2015

Annexure R1(b) - True copy of the order F.No.18/44/2007-Edn./Estt. Dated 1.6.2016

Annexure R1(c) - True copy of the Circular F.No.01/01/2014 – Estt/2288 dated 23.6.2016 issued by the Director (Services) UTL, Kavaratti

O.A 416/2017

Annexure A1 - A true copy of the physical disability certificate dated 14.3.2013

Annexure A2 - A true copy of the SSLC certificate of the applicant

Annexure A3 - A true copy of the certificate of Fisherman Training Course dated 15.4.1998

Annexure A4 - A true copy of employment notice issued by the second respondent

Annexure A5 - A true copy of the list of candidates qualified for the post of fisherman issued by the second respondent

Annexure A6 - A true copy of the notice dated 17.5.2017 issued by the second respondent

Annexure A7 - A true copy of the representation dated 8.5.2017 submitted before the first respondent

Annexure A8 - A true copy of the representation dated 8.5.2017 submitted before the second respondent

Annexure R1(a) - True copy of the employment notice F.No.18/18/2015-Edn/Estt(1) 516 dated 4.7.2016

Annexure R1(b) - True copy of letter F.No.18/3/2016 – Estt/1513 dated 29.4.2016

Annexure R1(c) - True copy of letter F.No.18/44/2007-Edn./Estt/382 dated 18.5.2016

Annexure R1(d) - True copy of circular F.No.01/01/2014 – Estt/2118 dated 10.6.2016

Annexure R1(e) - True copy of Circular F.No.01/01/2014-Estt/2288 dated 23.6.2016

Annexure R1(f) - True copy of the minutes dated 10.7.2017 issued by the Department to 12 selected candidates for the post of Fisherman

Annexure R1(g) - True copy of the order F.No.01/01/2014-Estt/2893 dated 14.9.2015

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