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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 181/00248 of 2019

Wednesday, this the 21st day of August, 2019

CORAM

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

Smt. Fakira M.,
W/o Abdul Jabbar,
Aged 32 years and
Residing at Malik Deenar Manzil House,
Union Territory of Lakshadweep,
Amini Island 682 552.

... Applicant

(By Advocate Mr. N.Unnikrishnan)

Versus

1. The Union of India,
represented by the Secretary to
Government of India,
Ministry of Human Resources Development,
Department of Education,
New Delhi - 110 001.
2. The Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.
3. The Director,
Department of Health Services,
Union Territory of Lakshadweep,
Kavaratti – 682 555.

..... Respondents

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(By ACGSC, Shri Shaji for Respondents1 and Advocate Shri S.Manu for Respondents-2&3)

This application having been heard on 20th August, 2019, the Tribunal on 21st August, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.248/2019 is filed by Smt.Fakira, against the refusal on the part of the respondent to appoint her to the post of Lab Technician. The reliefs sought in the OA are as follows:

- i) To call for the records leading to issuance of Annexure -A10;
- ii) To declare that Annexure-A10 is unsustainable in the eyes of law.;
- iii) To declare that the applicant is entitled to be appointed as Lab Technician from Annexure -A2 List against existing vacancies as evidenced in Annexures-A6 to A9;
- iv) issue appropriate order or direction to the respondents to issue necessary appointment order as Lab Technician against the existing vacancies as evidenced in Annexures-A6 to A9 to the applicant within a reasonable time;
- v) Issue appropriate order, direction quashing Annexure-A10;

AND

- vi) To issue such other order or direction to the respondents in the interest of justice and fairness to the applicant and to grant cost of this Original Application.

2. The respondents had issued an Employment Notice dated 07.11.2017 calling for applications for various posts under the Directorate of Health Services, Lakshadweep Administration. A copy of the said Employment

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Notice is at Annexure-A1. The selection was under direct recruitment through an open competitive examination.

3. As per Annexure A2, for the category of Lab Technician, the applicant was included as No.4 in the Wait list. There is only one candidate who was included in the select list. However, Sl.No.1 to 3 came to be appointed due to vacancies which arose till 31.12.2018 leaving only the applicant out. Citing information collected through RTI Act, the applicant maintains that there are two other vacancies, one of Shri Hameed, Lab Technician, who had retired on 31.03.2018 and Shri Zainul Abid, Senior Lab Technician, who had retired from service on 28.02.2014 (Annexure A6 and A7). Since the respondents did not reply to her representation, she had filed OA No.994/2018, which was disposed of by this Tribunal as per order dated 06.12.2018 directing the respondents to consider her application.

4. It is maintained that at this moment, there are more than four vacancies of Lab Technician under the Directorate of Health Services, Lakshadweep Administration. Despite this, the respondents have chosen to ignore her candidature by issuing the impugned order, Annexure A10 dated 06.02.2019 stating that they were bound to consider only vacancies which arose upto 07.12.2018 and there was no vacancy available to accommodate the applicant. The applicant submitted further representation on 07.02.2019, a copy of which is available at Annexure A11.

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5. The Standing Counsel for Lakshadweep Administration filed a Counsel Statement on behalf of the Respondents-1&3 disputing the contentions raised in the OA. It is maintained that there are only 10 posts of Lab Technicians at present and all these posts are now filled up including the last three by candidates who figure as Sl.No.1 to3 in the waiting list. Further, it is stated that the validity of Annexure A2 select list expired on 08.12.2018 and after one extension, which give it life upto 31.03.2019, there has been no further extension. Under the circumstances, no opportunity has been offered to the applicant.

6. Before the Counsel statement has been filed on behalf of the respondents, the applicant had filed MA No.723/2019 which was allowed. The said MA annexed a copy of the notification dated 22.07.2019 (Annexure A12) by which applications were called for appointing suitable candidates as Para Medical staff on contract basis for a period of two years. The said notification also includes six positions of Lab Technician.

7. The OA was finally heard on 20.08.2019. Shri N.Unnikrishnan, learned Counsel represented the applicant and the Standing Counsel, the Lakshadweep Administration, Respondents2&3. The matter relates to a short issue regarding the eligibility of the applicant who is next in line for appointment as Lab Technician. She had been a candidate in the open

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recruitment examination conducted for the post and had been placed as No.4 in the waiting list. Apart from one in the select list, three more candidates were appointed from the waiting list to fill up the available vacancies. Although the applicant in the OA has cited the names of some incumbents who had retired during the year preceding 07.02.2018 as well as others, the Counsel statement on behalf of the respondents is clear that there are only 10 vacancies and all of these are occupied by regular incumbents including the four who came through the open recruitment examination in which the applicant was also a participant. Besides, the validity of waiting list has not been extended beyond 31.03.2019. From this perspective the applicant has no justified case.

8. However, it is seen that the respondents, by virtue of Annexure A12 notification, has initiated the process for selecting Para Medical staff which includes six Lab Technicians. They are to be appointed on contract for a period of two years. The learned Counsel for the applicant, Shri Unnikrishnan pointed out that in the event of the applicant's claim not being approved for regular selection, she may at least be offered one of the contract level positions. As mentioned on pre-para, while admitting that the applicant has no cause to seek employment as a matter of right, we feel interests of justice will be met if we direct the respondents to accommodate the applicant on contract for a period of two years in one of the 6 Lab Technicians posts notified as per Annexure A12. OA is disposed of with the

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above direction. Along with the OA, MA No.722/2019 is also disposed of.

No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.181/00248/2019

- 1.** Annexure A1 - True copy of the Employment Notice F.No.5/2/2011-DHS dated 07.11.2017.
- 2.** Annexure A2 - True copy of the Selection List F.No.5/2/2011-DHS(1) dated 01.06.2018.
- 3.** Annexure A3 - True copy of the Representation dated 19.11.2018 submitted by the applicant.
- 4.** Annexure A4 - True copy of application dated 20.09.2018.
- 5.** Annexure A5 - True copy of the reply Letter F.No.20/18/2015-DHS(RTI)/1472 dated 30.11.2018.
- 6.** Annexure A6 - True copy of the Relieving Order F.No.1/53-MOAMN dated 31.03.2018 of Shri T.Hameed.
- 7.** Annexure A7 - True copy of the P.P.O No.850011400227 of Shri Zainul Abid, M., Senior Lab Technician.
- 8.** Annexure A8 - True copy of the order No.181/00994/2018 dated 06.12.2018 of this Hon'ble Tribunal.
- 9.** Annexure A9 - True copy of the Relieving Order F.No.2/12/2017-MOC 311 dated 30.11.2018 issued to Shri A.Akber Ali, Lab Technician.
- 10.** Annexure A10 - True copy of the Order F.no.5/12/2018-DHS/218 dated 06.02.2019 issued by the third respondent.
- 11.** Annexure A11 - True copy of Representation dated 07.02.2019 submitted by the applicant.
- 12.** Annexure A12 - True copy of the Notification F.No.72/01/2019-DHS(STAT) dated 22.07.2019 for the post of Para Medical Staff.
