

(2023) 01 CAT CK 0035

In the Central Administrative Tribunal

Case No : Original Application No. 181, 00408, 00418, 00473 Of 2019

Niyasudheen. A.K.

APPELLANT

Vs

Union Territory Of Lakshadweep Represented By Its
Administrator, Administration Of Union Territory Of
Lakshadweep, Secretariat, Kavaratti ? 682555 & Ors

RESPONDENT

Date of Decision : 23-01-2023

Acts Referred:

Citation : (2023) 01 CAT CK 0035

Hon'ble Judges : Sunil Thomas, Member (J);K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : Lal. K. Joseph, Sreekala. K.L., Vishnu. S. Chempazhanthiyil, T.C.
Govindaswamy, Joby Cyriac, Sreekala, K.B. Gangesh

Final Decision : Dismissed

Judgement

K.V. Eapen, Member A

1. These three O.As are being taken together for a common order as they have been filed following the same recruitment process for a post in which the three applicants in the three O.As were candidates. It appears that the Lakshadweep Administration had issued a notification on 31.03.2017 inviting applications for appointment to the post of Milkman (Animal Husbandry) on a regular basis from qualified local candidates of the islands. There were five posts of Milkman for which the applications were invited and the basic qualification prescribed was Matriculation/Equivalent pass. In the said notification the age limits were indicated as between 18-25 years (relaxable for SC/ST candidates etc., in accordance with the instructions/orders issued by the Government of India). The method of recruitment was indicated as giving 60% weightage to a Milking Skill Test, 25% for Milking Experience and 15% for Academic Merit. It was also indicated in the notification that the last date for receipt of the application with required certificates relating to proof of age, caste and educational qualifications would be 25.04.2017 and also that the crucial date for determining the age limits

will be the last date for receipt of the application.

2. The applicants in all the three O.As are natives of Lakshadweep Islands who are declared as Scheduled Tribes (ST). Hence, as per reservation policy of the Government of India for ST candidates, all were eligible for an age relaxation of 5 years as were other candidates from the Islands upto 30 years. The applicant in O.A.No.181/473/2019, which will be taken as the lead O.A in this order has submitted that he was 26 years of age at the relevant time. The other two applicants, in O.A.No.181/408/2019 as well as O.A.No.181/418/2019, have also indicated that they were within the age limits, going by the notification even without availing the relaxation allowed for ST candidates. The above notification inviting applications for the post of Milkman has been produced in O.A.No.181/473/2019 at Annexure A-1.

3. Much after all the interested candidates had given their applications pursuant to the Annexure A-1 notification, the respondents published another notice only on 04.02.2019 which they termed as the 'Final check list and reject list for the post of Milkman'. It was indicated in this final check list/reject list that the candidates who are eligible as per the list would be informed of the date and time of the recruitment. This Notice has been produced in O.A.No.181/473/2019 at Annexure A-2. The applicant in this O.A was shown as included at Sl.No.112 in the final list for Androth Island. It is submitted in their respective O.As that the other two applicants also appeared as included in the final check list. However, the 4th and 5th respondents in all the three O.As (Shri.Pookoya, Mujeeb Vilas of Kavaratti - 5th respondent and Shri.Nasser, Cheriya Kottaram of Kavaratti - 4th respondent) were placed in the reject list at Sl.Nos.48 (4th respondent) and 49 (5th respondent). After this check list/reject list was published, the selection by way of a Milking Skill Test was conducted for the persons who had been included in the final check list and it is stated that all three applicants participated in the same. The result of the selection were then published on 27.05.2019, ie., about three months after the final check list/reject list at Annexure A-2 was published. As per the results shown in the select list, which has been produced as the impugned document at Annexure A-3, five persons were declared as selected, including the 5th and the 4th respondents at the first and second positions respectively in the merit list, inspite of the fact that they had been declared as rejected as per Annexure A-2 list issued just a few months before. The applicant in O.A.No.181/473/2019 was indicated at Sl.No.1 in the waiting list (in the 6th position overall in Rank after the five selected candidates). The applicant in O.A.No.181/408/2019 was indicated at the 2nd position in the waiting list ie. in the 7th position overall in Rank. The applicant in O.A.No.181/418/2019 who was a lady candidate does not appear either in the select list or in the waiting list.

4. Following from the above the issue in these O.As is quite obvious. The main contention of the applicants in all three O.As is that a perusal of the aforementioned Annexure A-2 final check list/reject list would clearly establish that the 4th and 5th respondents were rejected as being over-aged. Hence, they

were not entitled to be considered for appointment in terms of the aforementioned Annexure A-1 notification. After the final select list was published on 27.05.2019 (Annexure A-3) it is stated that complaints were addressed to the 3rd respondent, the Secretary, Animal Husbandry Department, Union Territory of Lakshadweep. However even before any action on the complaints were taken it is stated that the 2nd respondent, the Director of Animal Husbandry, Union Territory of Lakshadweep issued appointment orders in just 2 days to all five candidates in the Final Select List at Annexure A-3 including the 4th and 5th respondents, vide the impugned Office Order dated 29.05.2019 produced at Annexure A-5 in O.A.No.181/473/2019. The applicants submit that it appears that some further age relaxation was granted to the 4th and 5th respondents by the Administration, treating them as 'in-service' candidates on account of the fact that they had been engaged as Casual Labourers under the Administration at some point of time. It is submitted by the applicants that it is a settled position of law that a Casual Labourer cannot be considered as an in-service candidate and is ineligible for age relaxation for the purpose of appointment. Hence, it is submitted that Annexure A-3 Select List and Annexure A-5 Office Order of Appointment, as produced in O.A.No.181/473/2019, in so far as they include the 4th and 5th respondents, is illegal and arbitrary, as these two party respondents were over-aged for selection and appointment as per the Annexure A-1 notification. Both of them had crossed the age limit of 30 years which was the maximum age after relaxation of age limit by 5 years for ST candidates on the last date of the Annexure A-1 Notification. Thus, being not eligible and even after their applications had been rejected as is evident from Annexure A-2 final check list/reject list, their selection and appointment is absolutely illegal and to be interfered with.

5. In addition to the above points the applicant in O.A.No.181/408/2019 also claims that he is a permanent resident of Kalpeni Island and is also a dairy farmer, running a small dairy farm for the past six years, as can be seen from the certificate from the concerned Veterinary Assistant Surgeon, Kalpeni produced in that O.A. It is stated that, as per the notification inviting applications the method of recruitment prescribed was by awarding marks to the candidates to the extent of 60% for the milking skill test, 25% for milking experience and 15% for academic merits. It is submitted that the date of birth of the 4th respondent is 30.12.1984 whereas the date of birth of the 5th respondent is 19.10.1976. Thus, on the last date for submission of applications as per the notification, the 4th respondent was aged 32 years and 4 months and the 5th respondent was aged 40 years and 6 months. Both the candidates were not eligible to be appointed on account of this going by the age qualifications prescribed in the notification.

6. Apart from the above aspects it is submitted that there was yet another illegality in the whole process. The notification had indicated that the marks for milking experience would have a total weight of 25%. However, it is only the 4th and 5th respondents who have been given marks for experience as can be seen

in the Annexure A-3 select list produced in the O.A.No.181/473/2019. They have both been awarded the total marks of 25 each for the Milking Experience while no marks have been awarded to any other candidate for experience as can be seen in the Annexure A-3 List. It is submitted that the Annexure A-1 notification had indicated that 25% marks would be given for milking experience, but had not stipulated any particular institution from which the experience was to be acquired. Therefore, it is contended by the applicant in O.A.No.181/408/2019 that any experience acquired by a candidate in milking cattle should be taken into account for the purpose of awarding marks under the said head. To be precise it is submitted that there was no stipulation in the employment notice to the effect that only the experience acquired by a candidate in a Government Institution alone would be taken into account for the purpose of awarding marks. In the present case, it is submitted that it appears that only the 4th and 5th respondents were awarded with the total 25 marks each for experience merely on the ground that they happened to be working in a Government establishment as Casual Labourers. On the other hand no marks were awarded to the applicant in O.A.No.181/408/2019 merely because of the reason that his experience came from a private dairy farm independently owned by him. It is again submitted that the said notification does not discriminate between experience acquired either from public or private establishments. Hence, the Respondents 1-3 in the O.As are not justified in imposing additional conditions to the selection process as such an imposition would amount to changing the rules of the game after its commencement, which is not permissible. Hence, it is submitted that this is also another reason why the selection of 4th and 5th respondents should be interfered with.

7. Further, it is submitted by the above applicant that even going by the marks as shown in the Annexure A-3 Final Select List dated 27.05.2019, it can be seen that in the concerned milking skill test, the first two selected candidates had got only 45 out of 60 and 40.5 out of 60. On the other hand the applicant in O.A.No.181/473/2019 had got 51.5 out of 60 as had the applicant in O.A.No.181/408/2019. Hence, even on the consideration of expertise in milking there is a substantial difference of marks between the 4th and 5th respondents and the applicants in O.A.No.181/473/2019 and O.A.No.181/408/2019. The relief therefore sought is to set aside the final select list as well as appointment orders containing the names of the 4th and 5th respondents and also to pass orders for a fresh select list by excluding the two respondents. It has also been specifically asked by the applicants in O.A.No.181/473/2019 and O.A.No.181/408/2019 to appoint them in place of these two respondents as they are at the first and second position in the Waiting List.

8. Reply statements have been filed in all the three O.As on behalf of the Respondent Nos.1-3 which are similar in content. The reply statement in O.A.No.181/473/2019 is taken up for summarising the position of the respondents. It is submitted that the applicants are not entitled to get any of the relief sought for. The Annexure A-1 notification dated 31.03.2017 had received

applications from as many as 321 candidates who had applied for filling the five vacant posts of Milkman. It is stated that initially a provisional check list had been published on 25.08.2017 calling for objections/comments in regard to the detailed credentials published about the applicants. In response to this notice three candidates, who were working as skilled Casual Labourers in the Animal Husbandry Department whose candidature had been rejected due to over-age approached the department seeking their inclusion in the final list of eligible candidates for trade test. It is to be noted that this provisional check list had been published a few months after the notification dated 31.03.2017 inviting applications for appointment of Milkman. Further, one other candidate, a Shri.K.Ahamed, who was a skilled Casual Labourer working in the Animal Husbandry Department for more than two decades furnished an order of this Tribunal in O.A.No.508/2013 to the respondents. This order had directed the respondents to take a compassionate and sympathetic view in his case and to extend the benefit of relaxation in age and educational qualifications to him in the event of any regular appointment in the department in future. It is submitted that on the strength of this order age relaxation to the tune of nearly 18 years was given to said Shri.K.Ahamed and he was included in the final list allowing him to participate in the trade test.

9. In addition to the above, it is submitted that the Administration, as per an order dated 29.09.2018, had increased the upper age limit for employment in Lakshadweep from 18-25 years to 18-30, with another 5 years relaxation for ST candidates. Thus, the upper age limit for local ST candidates became 35 years. When this notification dated 29.09.2018 was published, a copy of which is produced at Annexure R-1(b) along with the Reply, the 4th and 5th respondents approached the Administration seeking the benefit of relaxation in the age limits for them. They also cited the orders in the case of K.Ahamed in support. It is submitted by the respondents in the reply statement that on the date of trade test, the 4th respondent had not crossed the newly prescribed upper age limit of 35 years. Further these two private respondents had been working in the Animal Husbandry Department as Milkmen from 2013 and 2010 respectively. The respondents have also produced the final order of the Tribunal in O.A.No.508/2013 dated 31.03.2014 (case of Shri.K.Ahamed) at Annexure R-1(a). Further, explaining the reason for the age relaxation as notified in the order dated 29.09.2018 at Annexure R-1(b), it is indicated that in the peculiar conditions of Lakshadweep, including issues such as delay in recruitment, increased standard of education, the meager number of Group 'C' vacancies in many departments every year, it was decided to grant the age relaxation for all Group 'C' posts to allow those between the age limit of 18-30 years to apply. It had been also directed in the Notification of 29.09.2018 to amend the Recruitment Rules appropriately to bring the Rules in consonance with the decision. Thus, having put in more than 6 to 9 years of service and being skilled Casual Labourers, the 4th and 5th respondents had wanted to get the benefit of this age relaxation.

10. It is submitted that even otherwise, it was pertinent to mention that no other labourers other than them had been willing to work as Milkman, when the two private respondents were first recruited. This is quite evident from the certificates issued to them by the Chairperson, Village Dweep Panchayat. The official respondents have therefore submitted that the 4th and 5th respondents were thus considered as departmental candidates as they had more than three years service in the department. These two respondents were also thereby covered under a Government of India order wherein it is indicated that the maximum age limit prescribed for such candidates who are having three years of service in the department is 40 years with relaxation of five years for ST candidates for appointment to the Group 'C' posts by direct recruitment which are in the same line or allied cadre. Hence, due to this relaxation in age qualification by O.M of the DoP&T dated 27.03.2012 produced at Annexure R-1(e) the 5th respondent too had not crossed the age limits. Further, the Annexure R-1(e) O.M of the DoP&T also states that Casual Labourers are eligible for age relaxation for the period they had spent as Casual Labourer to be considered for regular employment by absorption. It is also mentioned in the said O.M that even the 'broken' period of service rendered as Casual Labourers can be taken into account for the purposes of age relaxation for appointment for regular posts. In addition to this the respondents submit that there is yet another O.M of DoP&T dated 22.08.1988, produced by them at Annexure R-1(f), where it is indicated that reservation is available for casual workers in regular posts, which will be treated as direct recruitment if selected. In other words, both these O.Ms underline the fact that age relaxation is available for Casual Labourers if the competent authority decides to extend the same as a benefit for consideration for regularisation.

11. In addition to the above points justifying the action taken by them the respondents submit that as per Rule 5 of the applicable Recruitment Rules, the Administration is competent to relax any of the provisions of the Recruitment Rules except for Rule 4. Thus, the Department of Animal Husbandry in these facts and circumstances had decided to give an opportunity to the 4th and 5th respondents to participate in the trade test. It is submitted that a corrigendum to the final check list produced by the applicants at Annexure A-2 was issued by the respondents. A copy of this corrigendum dated 25.02.2019 has been produced at Annexure R-1(g) and it is clarified that this was published almost immediately after the Annexure A-2 final check list and reject list dated 04.02.2019 was published. The said corrigendum was not produced by the applicants in the O.As. The corrigendum has indicated that 4th and 5th respondents who had been at Sl.No.48 and 49 of the Reject List in Annexure A-2 are removed from the same and included in the final check list for the post of Milkman. Since the approval of the competent authority for the said age relaxation had been obtained only one day prior to the Milking Skill Test, the corrigendum at Annexure R-1(g) was displayed on the Office notice board and was also read out for the information of all when the finally registered 118 candidates in the Milking Skill Test had

assembled in the office for collecting their hall tickets and for a briefing by the Chairman about the method and conduct of the test. It is submitted that no candidate raised any objection at that time to the said Corrigendum.

12. With regard to the issue raised about marks for Milking Experience the respondents have stated in their reply that the Selection Committee for the post had on 28.03.2017 itself held a meeting to decide about the distribution of the 25% marks in relation to the milking experience. It was decided to award the marks depending on the period of experience of the candidates as Milkman. It had also been decided by the Committee that in order to avoid fraudulent certificates only the experience gained in the department's dairy farms would be considered. Accordingly, it was decided that the distribution of marks for milking experience would be in such a manner that those who had experience of three months and more in the department dairy farm would get 25% marks, those who had experience between two to three months would get 15% marks and those who had experience below two months would get 10% marks. This decision was also published on the Notice Board for the information of the candidates. A copy of the minutes of the relevant Selection Committee Meeting in this regard has been produced at Annexure R-1(h). It is submitted that out of the total of 236 candidates who were found eligible for the trade test, nearly 40 candidates had experience certificates from various sources including private sources. It was only the 4th and 5th respondents who were having experience certificates from departmental dairy farms. Hence it is submitted that in view of the decision taken as produced at Annexure R-1(h) there was no ambiguity in the mark awarding process. All candidates had participated in the selection process were aware of the different aspects of the same.

13. Further, it is also accepted by the respondents that the performance of all the three applicants in this matter in the milking skill test was not bad as compared to others. It is due to this that the applicants in O.A.No.181/473/2019 and O.A.No.181/408/2019 could be placed at Sl.No.6 and 7 of the rank list and the applicant in O.A.No.181/418/2019 was placed at Sl. No.11 in the rank list. However, it is also to be noted that there were others who had performed better than the applicants and they had to be given the offer of appointment as the rank list was drawn on the basis of the aggregate marks obtained in the milking trade tests, experience as well as academic merit, and not just by milking talent alone. It is pointed out that even the candidate who had got 56 marks out of 60, which was the highest mark in the milking skill test could be placed only at the 4th position, because of the lower marks that he got in the other two attributes. A copy of the final marks and rank position of all the candidates who had appeared in the trade test for the post of Milkman is produced by the respondents at Annexure R-1(i). It is clear from this list that the applicant in O.A.No.181/473/2019 appears at Sl.No.6, the applicant in O.A.No.181/408/2019 appears at Sl.No.7 and the applicant in O.A.No.181/418/2019 appears at Sl.No.11.

14. The respondents on the basis of the above details submit that the procedure followed by them cannot be considered illegal and there is no merit in all the three O.As, which may be dismissed. Further, the 5th respondent has also filed a separate reply statement in O.A.No.181/473/2019 and O.A.No.181/408/2019. This contains very similar points as brought out in the reply statement given by the official respondents to the extent of attacking even the same annexures. Hence, it is not proposed to summarize this reply as the reply of the official respondents has already been elaborately brought out above.

15. The applicant in O.A.No.181/473/2019 is the only one who has filed a rejoinder to the above contentions. With regard to the contention that the order of this Tribunal in O.A.No.508/2013 filed by Shri.K.Ahamed, which has been produced by the official respondents at Annexure R-1(a), influencing their decision in relation to allowing age relaxation for the candidates in the selection it is submitted in the rejoinder that the same had been passed by the Tribunal in favour of the applicant therein taking note of his long tenure of 19 ½ years as casual labourer. The reasoning in that case cannot be extended to the cases of the 4th and 5th respondents, who have admittedly less than 10 years of engagement as casual labourer and that too with breaks in between. It is submitted that the benefit of Annexure R-1(a) order in O.A.No.508/2013 should not have been extended to the applicant therein or anybody else in the midst of the selection process, which had been initiated by the Annexure A-1 notification. The order of the Tribunal in O.A.No.508/2013 was dated 31.03.2014 and hence, the applicant therein should have claimed or been granted relaxation of age by the respondents on the basis of that order even before the issuance of the Annexure A-1 notification for selection which was issued as late as on 31.03.2017. The Administration therefore should not have entertained his request for age relaxation after initiation of the selection process pursuant to Annexure A-1 and, that too, after publication of check list and reject list vide Annexure A-2 for the same. In any case the benefit of Annexure R-1(a) has to be limited to the applicant therein and cannot be extended to the 4th and 5th respondents. The long casual service of the applicant in O.A.No.508/2013 of 19 ½ years had been considered by the Tribunal when the orders were passed whereas the 4th and 5th respondents were having only 4 and 7 years of engagement respectively as casual labourers in comparison on the date of issuance of Annexure A-1 notification. Hence they cannot be equated with the applicant in O.A.No.508/2013. It is also submitted that similarly any benefit of a general age relaxation which had been provided by the Annexure R-1(b) order dated 29.09.2018 should not have been made available to the party respondents once the process of selection to the post had been set in motion with the issue of the Annexure A-1 notification dated 31.03.2017. There was a specific age limit prescribed in this Notification for the candidates/intending applicants. The Annexure R-1(b) notification was issued subsequently only on 29.09.2018 and cannot have application in respect of a selection process which has been set in motion, way back in 2017.

16. In addition to the above, it is submitted by the applicant in O.A.No.181/473/2019 in the rejoinder that the 4th and 5th respondents being given the benefit of age relaxation considering them as departmental candidates having three years of service in the department on the basis of some DoP&T Circulars is also unsustainable. It is submitted that it is a settled position of law, as per the judgment of the Hon'ble Supreme Court in UPSC vs. Girish Jayanti Lal Vaghela, AIR 2006 SC 1165, that contract employees do not have a master-servant relationship with their employers and they cannot be equated as departmental candidates for the purpose of any relaxation of age. It is submitted that the status of a casual labourer is at par if not inferior to that of a contract employee. Based on the above decision in Girish Jayanti Lal Vaghela (supra), this Tribunal in O.A.No.417/2011 and other cases had held in the matter of certain appointments under Lakshadweep Administration that contract/casual labourers are not entitled for age relaxation. This order of the Tribunal has also been affirmed by the Hon'ble High Court in O.P.(CAT) No.1295/2012, produced at Annexure A-6 along with rejoinder. It is submitted that the said Annexure A-6 judgment is binding on Respondents 1-3. They cannot take a different stand in the cases of the 4th and 5th respondents. It is also provided in the rejoinder that the statement of the respondents that the Administration is competent to relax any of the provisions of Recruitment Rules, as provided under Rule 5 of the Recruitment Rules, is also legally untenable. The Rule 5 of the Recruitment Rules only empowers the Administrator to relax any of the provisions of the Recruitment Rules and such relaxation can therefore be granted only generally as applicable to all applicants at the time of issuance of a notification in the nature of Annexure A-1. It cannot be granted to individuals during the course of selection after the process of selection has been set in motion. Hence, the Lakshadweep Administration has no authority to issue an order as they have done vide the corrigendum at Annexure R-1(g) removing the names of the 4th and 5th respondents from the reject list for the post of Milkman. Further, even the averment that Annexure R-1(g) was published in the Notice Board and was read out to all the candidates during the conduct of the trade test is not true and is denied. The applicant never had an opportunity to know about the inclusion of 4th and 5th respondents in the select list during the course of selection.

17. We have heard learned counsel for the applicant in O.A.No.181/473/2019, Shri.K.B.Gangesh, learned counsel for the applicant in O.A.No.181/418/2019, Shri.Joby Cyriac and learned counsel for the applicant in O.A.No.181/408/2019, Shri.Lal.K.Joseph, Smt.Sreekala.K.L., Senior Panel Counsel for Lakshadweep appeared on behalf of the official respondents. Shri.Vishnu.S.Chempazhanthiyil, learned counsel appeared on behalf of the 5th respondent and Shri.T.C.Govindaswamy, learned counsel appeared on behalf of the 4th respondent. The position of the different parties have been indicated earlier. In addition, Shri.T.C.Govindaswamy, learned counsel appearing for the 4th respondent drew our attention to the judgment of the Hon'ble Supreme Court dated 12.12.2022 in Civil Appeal Nos.8822-8823 of 2022 arising out of S.L.P.(C)

Nos.10386-10387 of 2020 in the State of Uttar Pradesh vs. Karunesh Kumar & Ors. In paragraph 21, in the discussion portion of this judgment, it is pointed out that a candidate who has participated in the selection process is estopped and has acquiesced himself from questioning it thereafter, as held by the Hon'ble Supreme Court in the case of Anupal Singh vs. State of U.P., (2020) 2 SCC 173. In that case the private respondents had participated in the interview without protest and only after the result was announced and finding that they were not selected, they chose to challenge the revised notification. It was contended by counsel that the private respondents were, therefore, estopped from challenging the selection process. The Hon'ble Apex Court then held that it is a settled law that a person having consciously participated in the interview cannot turn around and challenge the selection process. Similarly in Madan Lal vs. State of J&K, (1995) 3 SCC 486, again quoted in paragraph 21 of Karunesh Kumar (supra) it was held that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or that the Selection Committee was not properly constituted. In addition in paragraph 32 of the Karunesh Kumar (supra) the Hon'ble Apex Court had observed that the respondents had placed reliance on K.Manjusree vs. State of A.P. & Anr., (2008) 3 SCC 512. However the Court in its considered view held that the facts of that decision were different from the present case where a change was introduced for the first time after the entire process was over, based on the decision made by the Full Court qua the cut off. Secondly, it is not as if the private respondents were nonsuited from participating in the recruitment process. It was found at paragraph 32 of Karunesh Kumar (supra) as follows :

"32.The principle governing changing the rules of game would not have any application when the change is with respect to selection process but not the qualification or eligibility. In other words, after the advertisement is made followed by an application by a candidate with further progress, a rule cannot be brought in, disqualifying him to participate in the selection process. It is only in such cases, the principle aforesaid will have an application or else it will hamper the power of the employer to recruit a person suitable for a job."

18. It was pointed out by learned counsel for the 4th respondent, Shri.T.C.Govindaswamy that the Annexure R-1(g) Corrigendum had been issued on 25.02.2019 just after the Annexure A-2 final check list and reject list was published on 04.02.2019. The application of the Corrigendum order at Annexure R-1(g) to the candidates in the selection was not questioned until the final rank list was produced and the applicants did not find themselves in the same. Thus, it is clear that they are affected by the doctrine of estoppel and acquiescence as held in Karunesh Kumar (supra). It is pointed out that the Corrigendum had been published openly increasing the age limit to 30 years and also openly discussed in the meeting held just before the Milking Skill Test. The applicants participated wholeheartedly in the entire process including in the skill test. It was submitted that if this Tribunal found that the process was done illegally at this stage, then

the entire process has to go and all persons who took part in the process should have been in the array and Annexure R-1(g) itself should have been challenged. Similarly, Shri.Vishnu.S.Chempazhanthiyil, who appeared on behalf of the 5th respondent submitted that it was not that the age limits were relaxed, rather it was the upper age limit that was enhanced to 30 years, with a further concession of 5 years for ST candidates along with other concessions as applicable for those working as casual labourers in line with the DoP&T's Circulars. The main reason for this age enhancement was that the selection process for Group 'C' posts was not being regularly conducted by different departments in Lakshadweep, which was affecting the prospects of the unemployed youth there as they were crossing the age limit. He asked as to what prejudice could be seen to be caused by enhancing the age limit as it did not deprive the applicants from taking part in the process. It rather only increased the level of participation by a few more candidates. He, too, submitted that the applicants had never objected or found the process wrong during the time it was being held, but having failed they are now appearing before this Tribunal. He also pointed out that the corrigendum at Annexure R-1(g) has not been challenged. He submitted that if it has been issued with proper reasoning it cannot be found defective at this stage.

19. Countering these submissions Shri.K.B.Gangesh learned counsel for the applicant in O.A.No.181/473/2019 pointed to the way that the corrigendum was announced just one day before the skill test when the candidates had only gathered to get their admit cards before participating in the same. Hence, when something is done at such short notice there is no question of any estoppel or acquiescence. It was required for the respondents to first make an amendment in the Recruitment Rules and then go ahead, rather than just making a corrigendum and going ahead with the same process. The applicant in O.A.No.181/473/2019 is challenging only the relaxation in the age limit/enhancement of the upper age limit and nothing else.

20. The above contentions have been considered. We are of the opinion that it would be difficult to agree with the arguments made by the learned counsel for the applicants that their rights have been restricted and there is no application of estoppel/acquiescence in the process in the given facts and circumstances. A recent judgment of the Hon'ble Supreme Court in *Chairman, State Bank of India vs. M.J.James* decided on 16.11.2021 in Civil Appeal No.8223 of 2009 has clarified the distinction between 'acquiescence' and 'delay and laches'. It is held at the paragraph 29, therein, that "the doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord, he cannot afterwards complain. In a literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express

approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. However, acquiescence will not apply if lapse of time is of no importance or consequence." Further in paragraph 30 it was also observed that "acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches."

21. Applying the above principles to the matter at hand we note that there were many opportunities for the applicants to have protested that their rights were being taken away or even affected adversely. However, nothing was even mildly agitated let alone protested. Of course, a counter argument to this is that these are largely semi-educated and unaware individuals, who could not be appropriately aware of their rights, but would go with the process told to them while it was on. Some consideration has to be given to the argument of the learned counsel for the applicant in O.A.No.181/473/2019 that these actions were done just one day prior to the skill test very soon after which the results were declared and appointment orders almost immediately issued. We are fairly sympathetic to this position; at the same time we are also persuaded by the argument that the overall rights of the applicants to be considered for selection have not been taken away or even curtailed by the process. It was that the Corrigendum issued increased the pool of applicants/candidates from which the selection could be made. This finding may be considered as being a bit disingenuous but it does appear from the final results produced at Annexure R-1(i) and at Annexure A-3 that there were three candidates at Sl.Nos.3, 4 & 5 of the Final Select List who were selected on the basis of their high marks in their Skill Tests in spite of getting zero marks like the applicants in the milking experience. It therefore does not appear that the departmental candidates/working as casual labourers were the only ones selected. The fact was only that two departmental candidates were allowed to get a legally allowed benefit in terms of age relaxation for consideration at a certain stage in the process before the skill test was done. Further, the marks that were allocated based on their experience, which was 25 out of the maximum possible 25 was a part of the selection process approved by the Selection Committee, which too was made public as early as on 28.03.2017. In any case, we would not view that an element of some active intervention in favour of already working departmental candidates/casual labourers in the process of selection as a reward for their long temporary or casual service can be termed to be discriminatory or illegal.

22. Overall, therefore, we do not find that the selection process being vitiated by illegalities or by the trope that there was a change in the rules of the game after the process had been initiated. The only change in the process was the increase in the upper age limit which was not done just for selection but was part of a general relaxation allowed for all recruitments in the Union Territory of

Lakshadweep. Hence, it cannot also be attacked on the ground of bias or favoritism in favour of only those involved in this selection process. Of course, the process of selection and finalisation was long and elaborate, but that is the general state of affairs in recruitment in so many Government agencies. Therefore, in view of these facts and considerations, we do not find that a case has been made for interfering with the selection list and quashing the appointments of the 4th and 5th respondents as prayed for. All the O.As are, accordingly, dismissed. There are no orders as to costs.

(Dated this the 23rd day of January 2023)