

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

...

O.A. No.378 of 1990

Dated New Delhi, this the 13th day of July, 1994

Hon'ble Shri J.P. Sharma, Member (J)  
Hon'ble Shri B. K. Singh, Member (A)

1. Shri Jiva Bhikha Vaishya  
R/o Vadlasheu  
Vanakbara  
DIU-362570
2. Shri Bhikha Bhagwan Makwana  
R/o A-6, 326, Bucharwada  
DIU-362520

... Applicant

By Advocate: Shri V.K. Garg, Proxy  
counsel for Shri S.S. Tewari.

VERSUS

1. Administration of Daman & Diu  
Through Chief Secretary  
Union Territory of Daman & Diu
2. The Education Secretary  
Union Territory of Daman & Diu  
Collectorate, Daman
3. The Collector of Diu
4. Smt. Aruna Vaghela
5. Smt. Shardaben M. Halpeti
6. Kum. U.D. Ora
7. Shri N. L. Yoganand
8. Smt. M. J. Patel
9. Shri V. B. Tandal

... Respondents

(Sl.4 to 9 address: C/o D. K. Sinha  
Sr. Standing Counsel, 128, Munirka Vihar  
New Delhi-67

By Advocate: None

O R D E R (Oral)

Shri J. P. Sharma, M(J)

Shri Jiva Bhikha Vaishya and Shri Bhikha Bhagwan Makwana jointly filed this application against non-consideration of the applicants for promotion to the post of Headmaster, Government Primary School by the DPC held on 22.1.90 and against the likely selection of the juniors to the applicants to the post of Headmaster by said DPC. This OA was filed in February, 1990 which was subsequently got amended by the applicant by MA.645/90.

2. The reliefs claimed by the applicants are (a) to quash and set aside the selections made by the DPC

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held on 22.1.90 for the post of Headmaster (b) to regularise the services of the applicants to the promotional post of Headmaster and (c) not to revert the applicants from that post.

2. When the panel was declared on 22.1.90, six more persons were added as respondents.

It is said that all those persons who have been empanelled are juniors to the applicants. The applicants have also added para:4.13-A and para:4.13-B to the GA. It is also stated that one Shri Govind Madhu who is not even a S.S.C. and also a junior to the applicant was promoted while the applicant no.1 who is a S.S.C. was not considered.

3. The respondents contested this application on the ground that the applicants are employees of the Portuguese Government and that after liberation of Goa, Daman and Diu in the year 1961, the applicants continued in the service with the Union Territory of Goa, Daman and Diu. The applicants, however, are governed by the Recruitment Rules framed by the Government of Goa, Daman and Diu vide notification dated 29th January, 1973. In order to be eligible according to rules for promotion to the post of Headmasters in Government Primary Schools, the concerned primary teachers are supposed to be holding a training diploma/certificate and five years' service in the grade. Since both the

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applicants did not fulfil that eligibility conditions to the post of Headmaster, they could not be promoted to the said post and on their representations as early as in the year 1986, on 17.4.86 applicant no.1 was informed that he does not fulfil the required educational qualification prescribed under the Recruitment Rules. After the applicant has been served this order, he did not take any step. And subsequently DPC was held on 21.1.90 and the DPC did not consider the applicants for promotion to the post of Headmaster, Government Primary School. The applicants could not be considered because of being ineligible according to Recruitment Rules, 1973, a copy of which has been annexed as Annexure R-I by the respondents to their reply. Thus, the applicants, according to the respondents, have no case.

4. The matter was taken up on earlier sitting by this Bench. Shri Tewari, learned counsel for the applicant stated that the applicant No.1 has already retired and whereabouts of applicant No.2 was not known. Another opportunity was given and the matter was listed yesterday (12.7.94). Yesterday, the proxy counsel appearing on behalf of the applicant prayed for time and we heard the proxy counsel at considerable length. The learned proxy counsel has pointed out the bio-data of applicant no.1 (Annexure-Ap.21 to 22) where against column.7 below Primary School Teacher, the word

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'Trained' is written in the bracket. On the date of liberation of Goa, Daman and Diu on 19.1.61, the applicant was a Primary School Teacher. Based on this writing, the learned proxy counsel argued that the applicant (No.1) fulfils the requirement of a certificate required for a Trained Teacher and as such he becomes eligible for consideration for the post of Primary School Headmaster. He also argued that he was absorbed and acquired status of a Primary School Teacher (Trained). In any case, when the applicant was informed in the year, 1986 that he does not hold the requisite certificate as under Recruitment Rule, 1973, then he should have assailed that order of 17.4.86. He did not do so. He was satisfied with that order, and as such no right accrues to him to claim it now after four years and even without getting that order quashed in the present application. So long the order 17.4.86 stands and is not set aside or quashed, applicant will not be eligible for consideration to the post of Primary School Headmaster. The Recruitment Rules of 1973 are still in force. In fact, the applicant, if he had a genuine claim as that some juniors to him were promoted, then he should have come for judicial review against that order. He has not done so. The applicant himself is at fault. The Tribunal cannot grant a relief which has not been prayed for. Unless the

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order of 17.4.86 is declared as an arbitrary or discriminatory order, the applicant cannot claim consideration for promotion to the post of Primary School Headmaster.

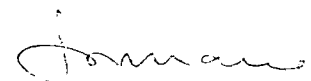
5. During the course of hearing, the learned proxy counsel has also filed certain papers - one is dated 1.11.82 in which Shri Govind Madhu was posted as Primary School Headmaster, but the name of the applicant is missing. At that time also the applicant should have assailed this order. But he did not do so. This goes against own pleadings of the applicant. Another order filed is of 21.2.83, a letter to Shri Govind Madhu in reply to his representation for granting him promotion with retrospective effect. This does not show that the applicant and Shri Govind Madhu had the same and similar case. It only refers to Shri Govind Madhu and the relief claimed by him was not granted by the administration.

6. Both the applicants have since retired. The applicants have not filed any document on record to show that on the liberation of Goa, Daman, and Diu in favour of Union of India what was the terms and conditions on which Primary School Teachers were absorbed. Merely because in the bio-data of the applicant, the word 'Trained' given under the writing Primary School Teacher at col.7, would not by itself

make him eligible under Recruitment Rule, 1973  
for the said post. Rules have to be observed in  
letter and spirit.

7. In view of the facts and circumstances of  
the case as above, we find that the present  
application is barred time and also devoid of  
merit, and the same is dismissed accordingly,  
leaving the parties to bear their own costs.

  
(B. K. Singh)  
Member (A)

  
(J. P. Sharma)  
Member (J)

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