

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 459 OF 1986.

DATE OF DECISION 28.4.1988

SHRI. M.O. AVIRA Petitioner

MR. M.R. ANAND Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents.

MR. J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Yes*

Shri M.O. Avira,
Mazdoor, (Group-D)
Garrison Engineer (P),
M.E.S., Bhuj-Kutch.

..... Petitioner.

(Advocate : Mr. M.R. Anand)

Versus.

1. Union of India,
(Notice of the petition to be
served through,
The Secretary,
Defence Ministry,
Government of India,
New Delhi.)

2- The Chief Engineer,
Jaipur Zone,
Power House Road,
Boni Park,
Jaipur - 302 006.

.... Respondents.

(Advocate: Mr. J.D. Ajmera)

J U D G M E N T

O.A.NO. 459 OF 1986.

Date: 28.4.1988.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Shri M.O. Avira, in this application, filed under section 19 of the Administrative Tribunals Act, 1985 on 23.12.1986 claims that the post of "Supervisor-Barrack & Stores, Grade II under the control of Chief Engineers Office, is in the public employment and the said post can be filled in by the recruitment made as per the rules framed by the Government of India which are reflected in the Government of India's decision at Annexure 'A'. According to him, the petitioner was the only departmental candidate available for promotion to the said post, but his name was not considered and the names of other Class III employees who were not qualified and who have not eligible for promotion, were considered and thus he has been denied promotion to the said post.

It is alleged that the said action on the part of the respondents is illegal, without jurisdiction and bad in law. He has therefore prayed that the impugned orders at Annexure 'E', 'C' & 'F' be quashed and set aside, as it has resulted in the denial of the appointment to the petitioner to the post of 'Supervisor-Barrack and Stores' with effect from 16th August, 1983. He has further prayed that the respondents be directed to confer upon the petitioner all the benefits including salary, seniority, arrears of salary, pay fixation, future promotions etc.

2. The respondents in their counter have denied the petitioner's assertions and the allegations made against them. It is contended that the petitioner is not entitled to be considered for promotion to the post of Supervisor-Barrack and Stores Gr.II. According to them, the posting is not by way of promotion, but it is by way of appointment. It is further submitted that the fact that the two departmental candidates from different areas were selected and appointed to the post of Supervisor-Barrack and Stores Gr.II and the orders passed against them is subject matter of litigation pending in the Central Administrative Tribunal, Additional Bench, Ahmedabad, has no relevance with the claim of the petitioner. The stand of the respondents is that the employees working in Group 'D' has no right to seek promotion to the post of Supervisor-Barrack & Stores, but under the Government instructions, such employees are allowed to compete with the candidate sponsored by the employment exchange for the appointment to the said higher post and direct recruitment is resorted to. The petitioner in his rejoinder, has reiterated that the action of the Chief Engineer (R&G Zone) in appointing ineligible candidate without any authority is illegal and bad in law and the denial of the policy decision in case of the petitioner is discriminatory, arbitrary and violative of the F.R.

of the petitioner. He has alleged that the action taken in this regard is malafide and the result of gross negligence on the part of the department i.e., C.E. R & G Zone.

3. When the matter came up for hearing we have heard Mr. M.R. Anand & Mr. J.D. Ajmera, the learned counsel for the petitioner and respondents respectively. We have also perused and considered the materials placed on record. During the course of his argument Mr. Anand strenuously urged that he is not concerned with challenging all the appointments given to the other unqualified and ineligible persons. But he is seeking the relief only to the extent that the petitioner has been denied consideration. According to him, the denial of the benefits of the policy decision at Annexure 'A' is discriminatory, arbitrary and violative of petitioner's fundamental right. In support of his submission, he has pressed in service, the Government instructions contained in memo Annexure 'A' dated 12th August, 1957, which reads as under :-

(9) The orders in decision No. (8) came up for reconsideration recently. Under the existing rules Class IV (Group D) servants cannot ordinarily be appointed directly to Class III (Group C) posts. All vacancies in Class III (Group C) have, as a rule to be filled in consultation with the Employment Exchange. It is also true that Class III (Group C) posts from an altogether different category from Class IV (Group D) did not hold out any prospects in the post of promotion to Class III (Group C). Whenever a vacancy occurs in Class III (Group C) suggestions are invited from the Employment Exchange. It has now been decided that while the existing recruitment procedure will be retained, where the appointing authorities after considering the names submitted by the Employment Exchange are of the view that qualified Class IV (Group D) servants already working in their respective office are more suitable, they may appoint the latter to the vacancies in Class III (Group C) even though their names may not be among those sponsored by the Employment Exchange.

(G.I.M.H. Affair Memo No.71/58/57-C.S(C) dated 12 Aug. 57)

4. Now at the very outset it may be stated that the post of "Supervisor B/S Gr.II" is a Class III post (Group-C) and under the rules, vacancies in Class III

have to be filled in consultation with the Employment Exchange. It is undisputed that Class IV group servants can not be ordinarily appointed directly to Class III (Group C) post under the existing rules. However in view of the above cited Government instructions, the said rule seems to have been relaxed to the extent that the eligible group 'D' employee may be allowed to compete with the candidates sponsored by the employment exchange for appointment to higher post and direct recruitment is resorted to. The appointing authorities in this regard are given discretion to consider and appoint qualified Class IV (Group D) servants already working in their respective office to such higher post.

5. On going through the pleadings of the petitioner it seems that he is labouring under an impression that the post of "Supervisor B/S Gr.II", is a post of promotion and that he has a right to be considered for the same. The fact that the petitioner is working as a "Mazdoor" (Group D) (at Bhuj) which is a Class IV post is not in dispute. The said post was under the Administrative control of Commander Engineer(P), Jamnagar and Chief Engineer(R&G Zone) but the Office of the Garrison Engineer was under the control of CWE(P) Bhuj on its formation with effect from 23rd May, 1983. It is the version of the respondents that when the Chief Engineer, Southern Command, Pune released some vacancies of Supervisor B/S Gr.II, the Chief Engineer, R&G Zone called for eligible departmental candidates to be interviewed for the above post in March 1983, from CWE(P) Jamnagar amongst others, but as the said letter calling eligible departmental candidates was not received by the Chief Engineer(P) Bhuj either from CWE(P) Jamnagar or CE(R&G Zone) Jaipur, the petitioner could not be informed of the recruitment action being taken by the Garrison Engineer, R&G Zone. Admittedly, thus it has resulted into non-consideration of the petitioner by C.E. R&G Zone when

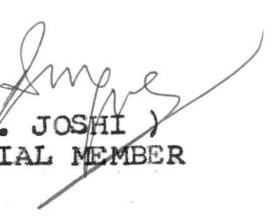
interviews/test for the post of Supervisor B/S Gr.II was conducted for selection. The petitioner has been accordingly apprised of this fact vide letter Annexure 'C' dated 19.8.83 and he has been advised that he will be considered as and when recruitment resorted to in future. It is also explained to him that due to ban on recruitment by the Government, no future recruitment was made to the said post and he could not be considered for the same, so far. It is thus quite evident that due to some communication gap, the petitioner could not be informed about the recruitment proceedings initiated in respect of the post in question.

6. It is thus quite obvious that the petitioner had no right to promotion or appointment to the post of Supervisor B/S Gr.II. A person like the petitioner holding the post of "Mazdoor" (Group D) can be only allowed or permitted to compete with the candidates sponsored by the Employment Exchange and that too is discretionary. "The words" appointing authorities may (emphasis supplied) appoint the later to the vacancies in Class IV, Group C ", used in the policy decision, Annexure 'A', are quite significant. The said instructions are directory in its nature. In Shri Iqbal Singh v/s. General Manager, Northern Railway etc. (1974(2) S.L.R. 5517 (Delhi)), it is held that the directory instructions are intended to be followed, but if they are infringed, selection could not be invalid. In the instant case, it is not shown that the infringement, if any, of the directory instructions was deliberate. An administrative act can be struck down only when it is grossly unreasonable. It is true, an administrative discretion is reviewable for legal error, procedural defect or abuse. Mere hardship is no ground to grant relief as prayed for. Writ of mandamus is a discretionary remedy and can not be claimed as a matter of right. In Manohar Lal Madan v/s.

State of Punjab (1973(1) S.L.R. 875 (Punjab & Haryana)) it was held that the writ petition lies against violation of an administrative order. The petitioner must have a legal right and it should also be shown that there is a duty imposed by law on the respondents to grant relief.

7. On the plain reading of the administrative instructions (Annexure 'A') reproduced earlier we hold that they do not create any right in favour of any employee. In otherwords, they are not affecting rights of a person or having civil consequences. Consequently such administrative instructions having not carried into effect can not confer any right (see P.C. Sethi & Ors. v/s. Union of India & Ors. 1975(1) S.L.R. 783). In the present case, the above referred administrative instructions do not confer rights and imposed duties. As a matter of fact, the object of said administrative instructions came to serve as a safety valve for the appropriate authorities to decide in case of exigencies and it only provide a guideline.

8. In this view of the matter, the petitioner has failed to establish his claim for the appointment to the post in question. The application therefore fails and the same is accordingly dismissed with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN