

Promotion (No)

(12)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No. 220/88 1988
~~T.A. No.~~

DATE OF DECISION 10-10-1991

Mr. Jagdish Ramani Petitioner

(Applicant in person) Advocate for the Petitioner(s)

Versus

Union of India Respondent

Mr. R.A. Mishra Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. K.J. RAMAN Member (A)

The Hon'ble Mr. R.C. BHATT Member (J)

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

Jagdish Ramani,
Assistant, C/o Dr. N.R. Bhagat,
Scientist P.O. Timbawadi,
Junagadh (Gujarat)

..... Applicant
(In person)

Versus

The Director,
National Research Centre for
Groundnut,
Timbawadi,
Junagadh.

..... Respondent

O.A. No.220 of 1988

JUDGMENT

Dated 10-10-1991

Per: Hon'ble Mr. K.J. Raman ... Member (A)

This application under Section 19 of the Administrative Tribunals Act, 1985, has been filed by the applicant who is working as an Assistant in the National Research Centre for Groundnut (NRCG), Junagadh, praying for the following reliefs:-

- "a) The learned Lordships, may graciously be pleased to prevent this wrongful and unjust action of holding the examination by the respondent and thereby issue an injunction or any other appropriate writ or direction stipulating that the post of Superintendent is to be filled by way of promotion as per the Rules.
- b) Pending hearing and final disposal of this petition an interim stay by way of ex-parte injunction may kindly be granted immediately.
- c) Such other orders may kindly be passed as this Hon'ble Tribunal deems just and necessary in the circumstances of the case."

2. The examination referred to above was to be held in accordance with the impugned circular dated 28-2-1988 on page 7. In this circular, the applicant had been advised to appear for the Competitive Examination to be held in terms thereof from 3-4-1988 to 5-4-1988.

At the time of admission of this application, the prayer for interim stay of the examination was not

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agreed to. However, it was ordered that the results of the examination and any action taken as a result thereof will be subject to the result of this case and that the persons declared successful ^{or} ~~are~~ promoted be given specific intimation thereof.

3. The case of the applicant is that, in accordance with the relevant Recruitment Rules, the post of Superintendent in the NRCG is to be filled by promotion. The applicant claims to be the senior most Assistant in the NRCG. The applicant, therefore, contends that the post should be filled only by promotion and not by Departmental Competitive Examination, as per the impugned circular.

4. This application was filed in 1988. The applicant did not apply for any amendment of the relief, even though his request for stopping the examination was not agreed to as aforesaid.

5. The respondents have filed two replies, resisting the claim of the applicant.

6. The case has been heard on 7-10-1991,

7. The applicant argued his case in person. The learned counsel for the respondents submitted arguments on behalf of the opposite side.

8. From the actual relief prayed for in this case, it is clear that the first relief (a) is basically for preventing the examination ^{from} taking place. As we have observed above, the examination was indeed allowed to take place. From the replies filed by the respondents and the submissions made by their learned counsel during the hearing, it is clear that the Departmental Competitive Examination did take place. It is also observed that a

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person has indeed been appointed as a result of the said examination, though with a rider that his appointment would be subject to the result of this case. The applicant did not controvert this position during the hearing. That being the position, the basic relief prayed for in this case cannot be given since the examination has already taken place. The applicant had not suitably amended the relief in the application to take into account the holding of the examination and the appointment of a person as a result thereof. Indeed, the applicant ought to have impleaded that person also if he wanted any relief against that appointment. In any case, in terms of the basic relief prayed for in this application, the latter has become infructuous to that extent.

9. The applicant sought to argue that in terms of the interim order, any appointment made, etc., was subject to the result of this application, and, therefore, this application should be decided in respect of the question of the post being filled only by promotion. If the applicant had desired this question to be specifically decided in this application, he should have made a clear prayer in this respect. He has not done so.

10. There is also a further difficulty which has come about after the filing of this application. Though the applicant claims to be an Assistant in the establishment of the NRCG, Junagadh, the respondents have averred that the applicant is not a regular Assistant in the NRCG, Junagadh. According to them, the applicant does

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not have any right to hold the post of Assistant regularly at the NRCG. It is stated that the applicant was originally appointed at NRCG, Junagadh on a deputation basis for a period of two years by an order issued in 1982. It is stated that the applicant ought to have been repatriated to his parent Institute (C.A.Z.R.I.). It is further stated that the applicant has indeed been repatriated to C.A.Z.R.I. by an order dated 13-10-1989. The I.C.A.R. had also rejected the applicant's representation ~~for retention~~ against the repatriation of the applicant.

11. It is further submitted by the respondents that the applicant has filed a O.A. No.466/1989 challenging his repatriation as aforesaid. This O.A. is still pending and there is also ^{an} interim order in this case.

12. The position, therefore, is that the status of the applicant in the NRCG is uncertain, as of now. It is noticed that even though the applicant was repatriated by the said order in 1989, the applicant has not sought any amendment to the prayer in the application incorporating this vital change in his status. Indeed, he had not furnished this information until the reply has been filed by the respondents. When it is doubtful whether the applicant belongs to the cadre and establishment of the NRCG as aforesaid, no mandamus or order can be issued in this application regarding the promotion of the applicant in the NRCG. From this point of view also, the relief prayed for in this application is not capable of being granted at this stage. The applicant has to legally establish his


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membership in the cadre of NRCG before the question
of his right to promotion ^{therein} can arise.

13. We, however, make it clear that the applicant shall be entitled to all available remedies under the law at the appropriate stage, when the question of his repatriation is finally settled. The decision in this application will not affect his right to such legal remedies.

14. With the above observations, the present application is dismissed with no order as to costs.


(R.C. BHATT)
Judicial Member


(K.J. RAMAN)
Administrative Member

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10-10-1991