

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

OA/278/1993

Date of Decision : 14.11.2000

Mr. Dilipkumar A. Padhiyar : Petitioner (s)

Mr. D.V. Mehta for B.P.Tanna : Advocate for the petitioner [s]

Versus

Union of India & Ors. : Respondents [s]

Mr. M. S. Rao : Advocate for the Respondent [s]

CORAM :

THE HON'BLE MR. A. S. SANGHAVI : MEMBER (J)

THE HON'BLE MR. G. C. SRIVASTAVA : MEMBER (A)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment? ~°
2. To be referred to the Reporter or not? ~
3. Whether their Lordships wish to see the fair copy of the judgment? ~°
4. Whether it needs to be circulated to other Benches of the Tribunal? ~°

Dilipkumar Arjunbhai Padhiyar
Nagnath Naka, Old Kumbhawada
Opp. Champakunj, Jamnagar.

- Applicant -

Advocate : Mr. D. V. Mehta for Mr. B. P. Tanna

Versus

1. Union of India,
Through the Chief of Naval
Staff (Port DCP),
Naval Headquarters,
New Delhi.
2. Commanding Officer,
INS Valsura, Jamnagar.
3. Flag Officer,
Commanding in Chief,
Western Naval Command
(S) Civilian,
Bombay - 400 001.

- Respondents -

Advocate : Mr. M. S. Rao

**ORAL ORDER
O.A 278 of 1993**

Date : 14.11.2000

Per Hon'ble Shri. A.S. Sanghavi : Member (J).

Neither the applicant nor the learned advocates of the applicants are present. They have not remained present on any of the past days. It appears that they are not interested in pursuing with this matter hence, this O.A is dismissed in default. No order as to costs.

G.C. Srivastava
(G.C. Srivastava)
Member (A)

A. S. Sanghavi
(A.S. Sanghavi)
Member (J)

तिथि
Dateकार्यालय टिप्पणी
Office Reportआदेश
Order

26-3-2001

Mr. N. S. Cariel for M/s. Tanna Associates prays for further time saying that he would like to produce some documents on record. Adjourned to 27-4-2001.

lcl
(G.C. Srivastava)
Member (A)

AS
(A.S. Sanghavi)
Member (J)

nkk

27/04/2001

None present on behalf of Mr. Tanna Associates.
Adjourned to 25/06/2001.

AS
(A.S. Sanghavi)
Member (J)

CMJ/

25.6.2001

Mr. Rao for the respondents not present.
On the request of the learned advocate of the applicant, adjourned to 12.7.2001.

lcl
(G.C. Srivastava)
Member (A)

AS
(A.S. Sanghavi)
Member (J)

12/7/01

Heard both the parties.
Considering the ground shown for restoring the O.A. on file, we allow the MA/221/93. OA is restored to board. No order as to cost.

Heard learned advocates for both the parties.

ORDER RESERVED

lcl
(G.C. Srivastava)
Member (A)

AS
(A.S. Sanghavi)
Member (J)

Finalised in open court on 31.1.01

(G.C. Srivastava)

(A.S. Sanghavi)
Member (J)

OJ/273/93

दिनांक
Dateकार्यालय टिप्पणी
Office Reportआदेश
Order

26-3-2001

Mr. N.S. Cariel for M/s. Tanna Associates prays for further time say ¹⁰ that he would like to produce some documents on record. Adjourned to 27-4-2001.

(G.C. Srivastava)
Member (A)(A.S. Sanghavi)
Member (J)

nkk

27/04/2001

None present on behalf of Mr. Tanna Associates
Adjourned to 25/06/2001.

(A.S. Sanghavi)
Member (J)

CMJ/

15.6.2001

Mr. Rao for the respondents not present.

On the request of the learned advocate of the applicant, adjourned to 12.7.2001.

(G.C. Srivastava)
Member (A)(A.S. Sanghvi)
Member (J)

M/s

Heard both the parties.
Considering the ground shown for restoring the O.A. on file, we allow the MA 1221/93. OA is restored to board. No order as to cost.

Heard learned advocates for both the parties.

ORDER RESERVED

(G.C. Srivastava)
Member (A)(A.S. Sanghvi)
Member (J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A/278/1993

Date of Decision : 31.07.2001

Mr. Dilipkumar A. Padhiyar : Petitioner (s)

Mr. B.V. Mehta for Mr. B.P.Tanna : Advocate for the Applicant (s)

Versus

Union of India & Ors. : Respondents(s)

Mr. M. S. Rao : Advocate for the respondent [s]

CORAM :

THE HON'BLE MR. A. S. SANGHVI : MEMBER [J]

THE HON'BLE MR. G. C. SRIVASTAVA : MEMBER [A]

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Mr. Dilipkumar Arjunbhai Padhiyar
Nagnath Naka,
Old Kumbharwada,
Opp. Champakunj,
Jamnagar.

- Applicant -

Advocate : Mr. B. V. Mehta for Mr. B. P. Tanna

Versus

1. Union of India,
Through the Chief of Naval,
Staff (Post DGP),
Naval Headquarters,
New Delhi.
2. Commanding Officer,
INS Valsura,
Jamnagar.
3. Flag Officer,
Commanding in Chief,
Western Naval Command,
(S) Civilian,
Bombay - 400 001.

- Respondents -

Advocate : Mr. M. S. Rao

**JUDGMENT
O.A 278 of 1993**

Date : 31/07/2001

Per Hon'ble Shri. A. S. Sanghvi : Member (J).

Heard Mr. D. V. Mehta for Mr. B. P. Tanna for the applicant
and Mr. M. S. Rao for the respondents.

2. The applicant has moved this O.A under the provisions of
Section 19 of the Administrative Tribunals Act, praying that the

respondents may be directed to appoint him to the post of Tracer by virtue of his earlier selection for the said post. The applicant is working as a Peon under respondent no.2 and according to him, next higher post where he can be promoted is that of Tracer in the pay scale of Rs.975-1540/- . The applicant being qualified for the post of Tracer and having 9 years of experience as Peon had applied in response to the advertisement issued by the respondents in 1987 for the vacant post of Tracer. He was interviewed and was successful before the Board. The respondent no.2 who is the Commanding Officer and the Board had approved his appointment. The Commanding Officer had written to the respondent no.3 on dated 8.8.87 for approval stating that the applicant was selected and the Board had recommended his name for the post of Tracer. However, as no reply was received, the respondent no.2 had written to the higher authority i.e., the Chief of the Naval Staff on 21.8.87 for confirmation of petitioner's appointment. However, respondent no.1 replied that out of the three posts of the Tracers, which were sanctioned for INS Valsura, one post was filled in but before the remaining two posts could be filled up, a ban had been imposed by the Govt., on creation of the new post or filling of existing vacancies. He had therefore said that till the ban was imposed the vacant post could not be filled up. The respondent no.3 had thereafter requested the respondent no.1 for releasing the appointment of the applicant at the earliest. The petitioner had also made requests on 14.10.91 and 10.1.93. However the respondent no.1 replied that the applicant's case could not be considered as per the Govt.'s order on subject. According to the applicant, in the meantime, one Mr.

Ninama had been appointed as a Tracer from Peon cadre and one Smt. Anita Bhatia had been called for interview for the post of Draftsman. According to him, if the ban was lifted he ought to have been given the appointment and since he was not considered there is a clear violation of Article 14 and 16 of the Constitution. He has therefore prayed that the respondents be directed to appoint him to the post of Tracer.

3. The respondents in their reply have contended inter alia that the applicant could not be appointed to the post in question as there was a ban in recruitment. It is further contended that the Board proceedings had a validity of only six months after the approval of the proceedings whereas in the present case the Board proceedings were not approved by the competent authority on account to the continued ban on recruitment. They have further contended that the applicant was advised to apply for the vacancies released from headquarter from time to time but the applicant did not apply for such post for the reasons best known to him. As regards Mrs. Bhatia, the respondents have stated that her husband Mr. L. D. Bhatia was working as senior chargeman and had died in the year 1999 while on duty. Mrs. Bhatia made a representation for compassionate appointment by her letter dated 19 September 1991. Since this was the question of appointment on compassionate ground, the same was under consideration and if approved by the competent authority she can be appointed. They have however made it clear that Mrs. Bhatia has yet not been appointed. As regards the allegations of the applicant of

appointment of one Mr. Ninama, the respondents have stated that no person by the name of Ninama has been appointed in the vacancy of the post in question in their establishment. It is also contended by the respondents that the promotion from the post of Peon is to the post of Daftary and not to the post of Tracer. It is further contended that the appointing authority for the post of Peon is Flag Officer Commanding-in-Chief and not the respondent no.2 and that so far the name of the applicant is concerned, the same was only recommended by the Board for appointment as the respondent no. 2 had no authority to appoint any person to the post. The Board proceedings were forwarded to the Headquarters, Western Naval Command, Bombay for approval but the proceedings were not approved by the competent authority as there was a ban for filling up the vacancies by direct recruitment and hence the applicant was not appointed. They have also contended that the ban was continued and therefore the applicant has not come to be appointed.

4. We have heard the learned advocates of both the parties at length and have carefully considered their submissions.

5. It is not in dispute that the applicant is serving as a Peon and the post of Tracer though a promotional post for the Peon is not the post where Peon can be appointed by right or on the seniority basis,

it is a selection post and admittedly the applicant had to undergo the selection. The applicant contends that he was selected and was recommended for appointment by the respondent no.2 but on the pretext that there was a ban for filling up the post, his appointment could not go through. The applicant does not dispute that there was a ban on filling up the post but according to him he had learned that two persons one Mr. Ninama and another Mrs. Bhatia were being appointed to other post and if the ban was not applicable to their appointment how the same can be made applicable to his case. The respondents have in their reply explained the position so far Mrs. Bhatia's case was concerned, since Mrs. Bhatia's case is that of a compassionate appointment, the ban can be relaxed in her case and even though no appointment was made of Mrs. Bhatia till the date of the filing of the reply, we do not see any discrimination or favoritism in the respondents considering her for appointment on compassionate ground. So far the other person namely Ninama is concerned, the respondents have clearly stated that no such person is given appointment in their department. Under the circumstances, the grievance made by the applicant does not survive. So far the right of the applicant is concerned we are unable to appreciate the contention of the applicant that he has a right to be appointed to the post. His name is merely sent by the Board for appointment to the post of the Tracer but the same has not been cleared by the appointing

authority. It is a settled position of law that a candidate in the select list has no indefeasible right to claim appointment. Under the circumstances, we do not see any merit in this O.A and are of the opinion that the O.A deserves to be rejected. In the conclusion therefore the O.A is rejected with no order as to costs.

G. C. Srivastava
(G. C. Srivastava)
Member (A)

A. S. Sanghvi
(A. S. Sanghvi)
Member (J)

Mb

Sr. No. 34

Dated: 25/7/02

Submitted : Hon'ble Vice Chairman &

Hon'ble Mr. A.S.Sanghavi, Member (J)

Hon'ble Mr. G.C. Srivastava, Member (A)

Certified Copy of order dated 15/02/02 in CA/

Sp. C.A. No. 1696 of 2002 passed by the
Supreme Court/High Court against the Judgment/Oral

Order passed by this Tribunal in CA/278/93 is placed
for perusal please.

H.C. orders
CAT order
upheld

30/07

Amend
S.O. (J) 31/7/02

31/7
D.R. (J) 31/7

Hon'ble Vice Chairman Concurred Vice

Hon'ble Mr. A.S.Sanghavi, Member (J) Concurred

Hon'ble Mr. G.C. Srivastava, Member (A) Concurred

Hon'ble Mrs. Meera Chhibber, Member (J) Concurred

18

Registered

34
URGENT

1918
Decree Despatch No.

Date

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 1696 of 2002



1. DILIPKUMAR ARJUNBHAI PADHIYAR
Vs
1. UNION OF INDIA & ORS.

Petitioner

Respondents

To

1. UNION OF INDIA

2. COMMANDING OFFICER

THROUGH CHIEF OF NAVAL STAFF
(POST DGP), NAVAL HEADQUARTERS
NEW DELHI

INS VALSURA
JAMNAGAR

3. FLAG OFFICER
COMMANDING IN CHIEF
WESTERN NAVAL COMMAND (S)
CIVILIAN, BOMBAY-400 001

4. THE MEMBER
CENTRAL ADMINISTRATIVE
TRIBUNAL,
AHMEDABAD BENCH, A'BAD.
REF:O.A. NO. 278/93

Upon reading the petition of the above named Petitioner presented to this High Court of Gujarat at Ahmedabad on 29/11/2001 praying to grant the prayers and etc...

And Whereas Upon hearing
MR HASIT H JOSHI for the Petitioner no. 1

25/11
Court passed the following order :-

CORAM :D.M.DHARMADHIKARI, C.J. & D.A.MEHTA, J.
DATE :15/02/2002

"1. Heard learned counsel for the petitioner.....
.....disposed of accordingly."

(COPY OF THE ORDER/JUDGEMENT IS ATTACHED HEREWITH)

HPC

Avd
25-07-02

Witness **DEVDATTA MADHAV DHARMADHIKARI**, Esquire Chief Justice at Ahmedabad
aforesaid this 15th day of Feb, 2002.

By the Court

For Deputy Registrar
This _____ day of Mar 2002

Note : This writ should be returned
duly certified within 2 weeks.
(673) 050320

SWT 1696/02

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1696 of 2002

DILIPKUMAR ARJUNBHAI PADHIYAR
Versus
UNION OF INDIA

Appearance:

1. Special Civil Application No, 1696 of 2002
MR HASIT H JOSHI for Petitioner No. 1
..... for Respondents No. 1-3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR. JUSTICE D.A.MEHTA

Date of Order: 15/02/2002

ORAL ORDER
(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

1. Heard learned counsel for the petitioner on admission of this Writ Petition under Article 227 of the Constitution of India against the order of the Central Administrative Tribunal dated 31-07-2001.

2. The petitioner was selected for the post of Tracer from the post of Peon under the Commanding Officer, INS Valsura, Jamnagar. The appointment of the petitioner as Tracer could not be made as there was ban on appointments.

3. The petitioner approached the Central Administrative Tribunal complaining that other two employees similarly situated have been appointed as Tracers and the petitioner has been discriminated. The Tribunal in the impugned order found that in the instances of the two employees quoted, one (Mrs. Bhatia) was appointed on compassionate ground and no formal

appointment was issued and the other employee (Mr. Ninama) was not at all appointed. Learned counsel now brings to our notice the rejoinder filed before the Tribunal giving another name of employee, who has been appointed as Tracer.

4. The Tribunal rejected the Petition of the petitioner on the ground that during the ban period, the petitioner cannot claim any right of appointment.

5. After hearing the learned counsel, we find no ground to interfere in the order of the Tribunal. As the facts have been stated in the order of the Tribunal, the petitioner was selected for the post of Tracer from the post of Peon, but it was only because of the ban imposed on appointments, he could not be appointed as Tracer. Obviously, as and when the ban is lifted, the petitioner's case can be considered for appointment as Tracer.

The Petition is disposed of accordingly.

sd/-
(D.M. DHARMADHIKARI, C.J.)

sd/-
(D.A. MEHTA, J.)

[sndevu]

TRUE COPY
Mr. C. S. Mehta
Assistant Registrar
The day of 2002
BB

FORM NO. 21
(See, Rule, 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

OA/TA/RA/CP/ 228193

Mr. D. A. Padhiyya APPLICANT (s)

VERSUS

U.O.I. & Ors. RESPONDENT (s)

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Certified that the file is complete in all aspect

Signature of S.O. (J)

Signature of
Dealing Hand