

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.No. 11
T.A.No. xxx

198 5
198 x

DATE OF DECISION 29-1-1987

Smt. Valsamma Abraham Applicant/s.

Mr. Daniel Advocate for the Applicant/s.

Versus

Development Commissioner Respondent/s.

SEEPZ & Ors.

Mr. M. I. Sethna Advocate for the Respondent(s).

CORAM:

The Hon'ble Vice-Chairman B.C. Gadgil

The Hon'ble Member J.G. Rajadhyaksha

1. Whether Reporters of local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not ?
3. Whether to be circulated to all Benches?

Yes

Yes

Yes.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Original Application No.11/85

Smt.Valsamma Abraham,
Office Supdt.,
Santa Cruz Electronics Export-
Processing Zone,
Andheri(East),
Bombay - 400 096.

... Applicant

Vs.

1. Development Commissioner,
Santa Cruz Electronics Export-
Processing Zone,
Andheri(East),
Bombay - 400 096.

2. Shri B.S.Sachdev,
Estate Manager,
Santa Cruz Electronics Export-
Processing Zone,
Andheri(East),
Bombay - 400 096.

3. Shri P.S.Raman,
Executive Assistant,
Santa Cruz Electronics Export-
Processing Zone,
Andheri(East),
Bombay - 400 096.

... Respondents

Coram: Hon'ble Vice-Chairman B.C.Gadgil
Hon'ble Member J.G.Rajadhyaksha

Appearance:

1. Mr.Daniel,Advocate,
for the applicant.

2. Mr.M.I.Sethna,
for Respondent No.1

3. Mr.Alwaney,
for Respondents Nos.2 & 3.

JUDGMENT

Date: 29-1-1987.

(Per B.C.Gadgil,Vice-Chairman)

This matter pertains to the employment in a Government organisation known as The Santacruz Electronic Export Processing Zone. This organisation is also popularly known as SEEPZ. By this application the applicant has

...2/-

challenged the ad hoc appointments of Respondents Nos.2 & 3 and claims that she should be appointed on ad hoc basis in either of the posts held by them. There is also a prayer that such ad hoc appointments should be stopped and that the recruitment rules which have been proposed to be revised should be approved immediately.

2. The recruitment rules for the employees in this organisation have been approved and finalised in 1976 and 1978. We are concerned with the three posts viz. (i) Estate Manager (ii) Executive Assistant and (iii) Administrative Officer. The applicant was originally appointed as Lower Division Clerk in the organisation known as Kandla Free Trade Zone on 1-9-1967. She was promoted as Upper Division Clerk on 1-4-1977. The SEEPZ organisation came into existence some time in 1973-74. It appears that initially employees were drafted from various departments on deputation or on transfer. The applicant got herself transferred to SEEPZ on 17-6-1974. Of course, her seniority in SEEPZ would be below earlier employees in that cadre. On 1-4-1979 she was promoted as Office Superintendent in the grade of 550-750.

3. The post of Estate Manager was held by someone else on deputation. That incumbent went back to his parent department in 1979, and hence it was necessary to fill the post. As per the recruitment rules it is a post for deputation officers holding analogous posts under the Central Government or State Government or holding a post in the scale of Rs.550 - 900 with three years service and having experience of Estate Management. Respondent No.2 was working as Assistant in the grade of Rs.425 - 600. Originally, he belonged to the Tariff Commission and after being declared surplus he was absorbed in SEEPZ on 1-8-1976. It was alleged that on such

absorption he is not entitled to count his previous service with Tariff Commission for the purposes of seniority etc.

On 1-3-1979 Respondent No.2 was appointed on ad hoc basis as Estate Manager. It appears that this was done as the recruitment rules were under revision. The draft thereof has been sent to the Government of India for approval. The grievance of the applicant is that Respondent No.2 is not eligible for appointment as Estate Manager as he was not holding any analogous post. Similarly he was not holding the post in the scale of Rs.550 - 900 for a period of 3 years. The applicant therefore, challenges this ~~appointment~~ ~~appointment~~ of Respondent No.2 which has been continued from time-to-time till today.

4. From 1985 onwards the Respondent No.2 is holding additional charge of the post of Administrative Officer. He is not getting any special or additional pay for this charge. Under the existing recruitment rules, the post of Administrative Officer can be filled in by transfer on deputation failing which by direct recruitment. For transfer on deputation the officer must hold analogous post or he should be holding the post for three years in the scale of Rs.650 - 1200 and should have experience in establishment and house keeping matters. For direct recruitment, the eligibility clause is a Degree of a recognised university, with 5 years experience of administration, accounts, establishment etc. The grievance of the applicant is that the Respondent No.2 is not eligible to hold the additional charge of this post, either.

5. The third post about which the grievance is made is that of Executive Assistant. Under the recruitment rules the post can be filled in by transfer on deputation/promotion. The eligibility clause is that the officer must be working with the Central Government or State Government

holding analogous posts or holding the post of Stenographer for 8 years in the scale of Rs.425 - 800. A grade II Stenographer working with SEEPZ for 8 years on regular basis is also eligible for being considered for promotion. Respondent No.3 was appointed as Sr.Stenographer in the grade of Rs.425-700 on 20-2-1980 and he has been appointed on ad hoc basis as Executive Assistant on 25-9-1981. The contention of the applicant is that Respondent No.3 does not comply with the eligibility clause. She claims that she should be appointed on ad hoc basis in any of the posts. In addition to prayer for such appointment the applicant has also prayed that the practice of making ad hoc appointment should be forthwith stopped and the proposed revised rules should be approved early.

6. Respondent No.1 has filed his affidavit in reply which begins on page 95 of the compilation. Respondent Nos. 2 & 3 have also filed their replies. In substance all of them support the appointment of Respondents No.2 & 3 on ad hoc basis. At the time of arguments on the application, Mr. Joshi, who is the Public Relations Officer of Commerce Ministry and SEEPZ has stated that the proposed revision of the recruitment rules would be finalised within a very short time as the matter is pending with the Central Government. He wanted to file an undertaking of the concerned officer that the rules would be so finalised within a specified period. However, we could gather that the finalisation of the rules would not be in the hands of the officer who intended to give such an undertaking. Hence we thought it fit not to take that undertaking on record as we ourselves would give directions in that respect as detailed in the final order.

... 5/-

7. It is true that Respondent No.2 & 3 have been appointed on ad hoc basis as Estate Manager and Executive Assistant, respectively. It is also true that Respondent No.2 is holding the additional charge of Administrative Officer though he is not getting any additional remuneration. The obvious reason for making such ad hoc appointments of Estate Manager and Executive Assistant is that the existing recruitment rules permit deputation. Reference to these rules has already been made in paragraph 3 & 5 above. It appears that the case of the SEEPZ is that competent persons are not available on deputation to fill these posts as per the rules. As far as the post of Executive Assistant is concerned it can also be filled in by promotion from amongst the employees of the SEEPZ. However, it is common ground that there is no such person available for promotion.

8. The applicant claims that instead of respondent Nos. 2 & 3, she should have been appointed on ad hoc basis in any of these posts. It is, however, material to note that the applicant herself is not eligible to hold any of these posts under the existing rules. For example, the post of Estate Manager can be filled in only by deputation of person holding analogous posts or holding a post for 3 years in the scale of Rs.550 - 900. with experience of Estate Management. The applicant submitted that though she belongs to the SEEPZ organisation she can be taken up on deputation in the same organisation by making her appointment as Estate Manager. It was contended by Mr.Daniel, learned advocate for applicant, that the term 'deputation' should be given an extended meaning which should permit an employee in the organisation to seek an appointment on deputation. We are not able to accept this submission. The obvious reason is

that in service matters the 'direct recruitment', 'deputation', 'promotion' and other terms have a recognised meaning. As far as the meaning of 'deputation' is concerned there cannot be any dispute that a person from another department, if so appointed, is repatriated to his parent department after the expiry of the deputation period. It will not, therefore, be possible to accept Mr. Daniel's submission that a person who belonged to the department can be recruited to some other post in the very department 'on deputation'. The position would not be in favour of the applicant even if the above mentioned extended meaning is given to the word 'deputation'. The applicant is not holding the post in the scale of Rs.550 - 900. She is in the pay scale of Rs.550 - 750. Secondly, she has no experience of Estate Management. Thus the applicant is not eligible to hold the post of Estate Manager under the rules. Of course, at this stage we may also observe that Respondent No.2 himself is not so eligible to hold that post.

9. As far as the post of Executive Assistant is concerned, we have already observed that the post can be filled in any of the two manners i.e. either on deputation or on promotion. The deputation clause will not be of any use to the applicant. As far as the promotion is concerned, what is required is that the employee must be Gr.II Stenographer with 8 years service. It is common ground that the applicant is not a stenographer and hence she is not eligible to hold that post. At the same time, it is necessary to bear in mind that Respondent No.3 is also not eligible to hold that post on promotion because he is with SEEPZ only from 1980 as Stenographer.

...7/-

10. The third post is that of Administrative Officer. We have already observed that Respondent No.2 is holding additional charge of that post. The post can be filled in by transfer on deputation failing which by direct recruitment. The applicant is not entitled to have the post by way of transfer on deputation. The question of direct recruitment of the applicant does not arise for the present as the post has not been advertised. We are told that it was not so advertised as there was a ban on fresh recruitment. Of course this ban would not come in the way of SEEPZ to get an appropriate person on deputation from other departments. In case such deputationist is not available and in case, at present, there exists no ban ~~on~~ ^{for} direct recruitment it is desirable that the SEEPZ should process the filling of post of Administrative Officer by direct recruitment according to the rules. We are giving directions in this respect in the final order.

11. The above discussion would, therefore, show that neither the applicant nor the Respondent No.2 is eligible under the rules to hold the post of Estate Manager. Similarly, neither the applicant nor Respondent No.3 is eligible under the existing rules to hold the post of Executive Assistant. We have already observed that the applicant is not eligible to hold the post of Administrative Officer on deputation and similarly, there is no question of her getting directly recruited so long as the post has not been advertised, enabling her to apply for the same, if eligible.

12. Mr. Sethna submitted that the applicant has no locus to challenge the appointment of Respondent No.2 & 3 when she herself is not eligible to hold those posts under

the rules. He relied upon the decision of the Supreme Court in the case of Dr.N.C.Singhal V. Union of India and others reported in 1980 SCC(L&S) 269. In paragraph 21 the Supreme Court has observed as follows :-

"Having examined the challenge to the promotion of respondents 4 to 24 on merits, it must be made clear that the appellant is least qualified to question their promotions. Each one of them was promoted to a post in supertime grade II in a speciality other than Ophthalmology and appellant admittedly was not qualified for any of these posts. Even if their promotions are struck down, appellant will not get any post vacated by them. Incidentally, High Court also upheld their promotions observing that by the time the petition was heard each one of them had requisite service qualification and, therefore, the promotions, could not be struck down. Once the challenge on merits fails, the second string to the bow need not be examined. Having said all this, appellant is least competent to challenge their promotions....."

Even on general principles it will be very difficult for a person to challenge an ad hoc appointment of someone else when that person is not himself eligible for appointment under the Recruitment rules. Thus the applicant cannot make any valid grievance about the ad hoc appointment of Respondents Nos.2 & 3. It is true that these respondents themselves are not eligible to hold the posts. But same is the position as far as the applicant is concerned. It was rightly submitted by Mr.Sethna that an ad hoc arrangement by appointing Respondent Nos. 2 & 3 was necessary to run the administration and that the applicant can neither make a grievance about it nor can claim her own appointment on ad hoc basis.

13. During the pendency of this application three more employees viz. Phanse, Kamble and Mane prayed that

they should be allowed to intervene as they are interested in this litigation. We have passed an order that they may make oral submission in that respect. They are holding the posts of Licensing Assistant, Security Officer and Asstt. Security Officer respectively on ad hoc basis. They say that they are interested in this litigation as the question of ad hoc appointment is being agitated by the applicant. They apprehend that if ad hoc appointments are struck down, they might be adversely affected. According to them all the ad hoc appointments in the organisation have been made out of necessity and that on humanitarian grounds they should not be disturbed. In this litigation we do not propose to consider the consequences that follow on account of such ad hoc appointment. It is true that there are certain Govt. instructions that the ad hoc appointments cannot exceed some prescribed period. However, the effect of such excess period in the ad hoc appointment does not specifically arise in this litigation and we refrain from considering that aspect.

14. It appears that appointments are continued on ad hoc basis as the recruitment rules are proposed to be revised. The proposal is pending with the Government since 1979. It is high time that necessary decision in respect of the proposed revised rules is now taken as early as possible, say within a period of 6 months from today.

15. The net result is that the applicant fails to get any relief except the direction that the concerned authority should take a decision about the proposed revised recruitment rules expeditiously say within a period of 6 months. Respondent No.1 should communicate this direction to the concerned authorities. 10/-

Respondent No.1 is further directed to get a suitable person on deputation from other departments for the post of Administrative Officer. In case such deputationist is not available and in case at present there exists no ban on ~~for~~ direct recruitment, the Respondent No.1 is further directed to process the filling of the post of Administrative Officer by direct recruitment, according to the rules.

Parties to bear their own costs.

B.C. Gadgil
(B.C. GADGIL)
Vice-Chairman

J.G. Rajadhyaksha
(J.G. RAJADHYAKSHA)
Member

Received copy of
Judgment on 29/1/87

Joshi
29/1/87
(L.D. JOSHI)
P.R.O. SEETZ
Respondent No.1

Received photo copy
of the judgment on
29-1-87

29-1-87
ESTATE MANAGER
SEETZ
Respondent No.2

Received
copy of the judgment
on 29/1/87
V.D. Desai
(Applicant)