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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW ~~XXXXXXXX~~ BOMBAY BENCH

O.A. No. 414/86
~~XXXXXXXX~~

198

DATE OF DECISION 23-11-1987

Shri Pramod Haribhai Vashi Petitioner

Shri M.P.Vashi Advocate for the Petitioner(s)

Versus

Union of India and 3 Others Respondent

Shri J.D.Desai(for Shri M.I.Sethna)for
R.Nos.1 to 3 and Shri Patankar for
R.No.4 Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.G.Rajadhyaksha, Member(A)

The Hon'ble Mr. M.B.Mujumdar, Member(J)

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

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

ORIGINAL APPLICATION NO.414/86.

Shri Pramod Haribhai Vashi,
 22, Government Quarters, (Class-IIIA)
 Near Children's Park, Silvassa.
 (Dadra & Nagar Haveli) (Union Territory) ...Applicant.

V/s.

1. Union of India (Through the Secretary,
 Ministry of Home Affairs, New Delhi)
2. Administrator, Dadra & Nagar Haveli,
 Cabo Raj Nivas, Post: Caranzalem
 (Goa)
3. Collector, Dadra & Nagar Haveli,
 Silvassa (Dadra & Nagar Haveli)
4. S.A. Pawar,
 Sub-Divisional Soil Conservation Officer,
 Silvassa, Quarter No.1,
 Class III-A, Govt. Quarters,
 Near Children's Park,
 Silvassa.
 (Dadra & Nagar Haveli)-U.T. ...Respondents.

Coram: Hon'ble Member (A) Shri J.G. Rajadhyaksha.
 Hon'ble Member (J) Shri M.B. Mujumdar.

Appearances:

1. Mr. M.P. Vashi,
 Advocate for the applicant.
2. Mr. J.D. Desai (for
 Mr. M.I. Sethna)
 for Respondent Nos.1 to 3.
3. Mr. Patankar,
 Advocate for Respondent No.4.

ORAL JUDGMENT:
 (Per M.B. Mujumdar, Member (J))

Date:23.11.1987.

This application is filed under Section 19 of
 the Administrative Tribunals Act, 1985.

2. The essential facts for the purpose of the judgment
 are these: The applicant Shri P.H. Vashi, was appointed

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as Agricultural Supervisor w.e.f. 19.8.1970 and in due course he was confirmed with effect from the same date. Respondent No.4 Shri S.A. Pawar, was appointed as Agricultural Supervisor w.e.f. 28.12.1971 and in due course he was confirmed w.e.f. 1.3.1973. The post of Sub Divisional Soil Conservation Officer (SDSCO), which is class II Gazetted (Group 'B'), is a selection post. In 1982 there were two vacancies of SDSCOs. However, there were no rules indicating how these posts should be filled up. Still by an order dated 29.12.1981 the respondents had called three Agricultural Supervisors for interview. They were the applicant Vashi, Respondent No.4 Pawar and one K.S. Gavit. As the applicant was senior to all of them he challenged that order giving an interview call by filing Civil Suit No.1 of 1982 in the Court of the Civil Judge, Dadra & Nagar Haveli, at Silvassa. He had requested for an ad-interim order for staying the interviews. After hearing the advocates for both the sides the learned Civil Judge restrained respondent Nos.1 to 3 in this case from giving effect to the order dated 29.12.1981. However, the learned Civil Judge directed that in case of urgency to fill up the post they would be at liberty to follow the same procedure which was being followed for promotion in regard to the promotions of the Deputy Engineers in Public Works Department and of the Medical Officer in Health Department. It appears that subsequently the respondents moved the learned Civil Judge for modification of that order because necessary rules were framed w.e.f. 2.4.82. As the learned Civil Judge was on leave, the District Judge who was holding charge passed an order dated 12.5.82

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directing the respondents to observe the rules framed by the Union Public Service Commission, scrupulously, for the purpose of promotion to the post of SDSCO, pending the hearing and final disposal of this suit.

3. The recruitment rules for Class II gazetted post of SDSCO which had come into effect on 2nd April, 1982 provided that 50% of the posts should be filled by promotion failing which by transfer on deputation (including short-term contract) and failing both by direct recruitment and the remaining 50% by direct recruitment.

4. The meeting of the Departmental Promotion Committee was held on 29.5.85 to decide the cases for promotion to the post of SDSCO. The DPC consisted of the Collector, Dadra and Nagar Haveli as Chairman, Secretary to the Administrator and Deputy Conservator of Forests, as Members. The cases of three Agricultural Supervisors who fulfilled the necessary requirements were considered by the DPC. The persons considered were the applicant Vashi, Respondent No.4 Pawar and one K.S. Gavit. After considering the relevant record it was found that the performance of Respondent No.4 was "Very Good", while that of the applicant "Good". On the basis of these recommendations Respondent No.4 was promoted and posted as SDSCO purely on temporary basis with effect from 1.7.82 and on probation for a period of 2 years. However, the applicant was promoted and appointed as SDSCO purely on ad-hoc basis with effect from 1.7.1982. It was specifically made clear in the order that his appointment would not carry any right for regular appointment and also for seniority in the cadre.

5. The circumstances show that Respondent No.4 was promoted and posted to the post which was available for promotees, while the applicant was appointed to the post which was available for direct recruits. The post available for direct recruits was advertised by the UPSC on 22.1.1983. Neither the applicant nor the respondent No.4 ^{was eligible} ~~were candidates~~ for such direct recruitment. 29 persons had applied for the posts but only 5 were called for interview. Out of them, three appeared for the interview which was held on 18.5.1983. One Dr. S.K.Mukerji was selected for the post and he was given an appointment letter on 25.6.1983. But he did not take up the appointment.

6. In view of the difficulties experienced by the Administration in securing persons for the posts reserved for direct recruits, the Recruitment Rules were amended with effect from 12.4.1984. As per the amendment all the posts of SDSCO were directed to be filled up by promotion failing which by transfer on deputation (including short term contract) failing both by direct recruitment. After the rules were amended, the DPC held its meeting on 8.4.1986, and considered four persons including the applicant for the post of SDSCO and recommended that ad-hoc appointment of the applicant may be regularised with retrospective effect from 12.4.1984 and he be placed on probation from that date. Thereafter, by an order dated 21.5.1986 the applicant was appointed temporarily to officiate on regular basis as SDSCO with effect from 12.4.1984. We may point out that about 2 years before that i.e. 9.8.1984 the DPC had considered the case of the respondent No.4 for regularising him on the post of SDSCO and regularised him with effect from 1.7.1982 against

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the post available for promotees.

7. It is the case of the applicant that in the cadre of Agricultural Supervisor he was senior to Respondent No.4 and hence he should have been regularised with effect from 1.7.1982 and not from 12.4.1984. He has also requested that in the seniority list of SDSCO he should be shown as senior to respondent No.4.

8. Respondent No.1 to 3 and Respondent No.4 have filed separate written statements explaining the factual position. We have heard Mr. M.P. Vashi the learned advocate for the applicant and Mr. J.D. Desai (for Mr. M.I. Sethna) advocate for respondents Nos. 1 to 3 and Mr. P.V. Patankar advocate for respondent No.4. After carefully considering the factual and legal position we do not think that the applicant has a good case.

9. As already pointed out the DPC in its meeting held on 25.9.1985 had found the performance of Respondent No.4 Pawar as 'Very Good' and that of the applicant Vashi as 'Good'. Mr. Vashi made a grievance that in spite of his repeated representation he was never informed about the recommendations of the DPC. But we are not aware of any rule which makes it incumbent upon the authorities to intimate the recommendations of the DPC to the persons concerned. The minutes of the meeting of the DPC show that the DPC had considered all the relevant factors at length while making the recommendations. We have already referred to the 1982 Recruitment Rules which provided that 50% of the vacancies for the post of SDSCO were to be filled up by promotion failing which by transfer on deputation (including short-term contract) and failing both by direct recruitment and 50% that remained, by direct recruitment. Both the applicant and respondent No.4 were

working as Agricultural Supervisors. Hence they could only be promoted against the 50% quota available for departmental candidates. That is why on the recommendations of the DPC the authorities could appoint only one of them as SDSCO. As the performance of Respondent No.4 was found 'Very Good' by the DPC he was required to be appointed as SDSCO in preference to the applicant.

10. Still as the post which was to be filled up by direct recruitment was vacant, the authorities chose to appoint the applicant to that post on ad-hoc basis. This position was made very clear to the applicant in the appointment order dated 29.6.1982. The authorities had also made it clear to him that his appointment shall not carry any right for regular appointment and also for seniority in the cadre. It does not appear that the applicant had challenged these conditions in the order before any Court of law, in proper time.

11. It is because Dr. Mukerji could not join his appointment as SDSCO, and as the Rules were amended thereafter that the applicant's appointment could be regularised with effect from the amendment of rules i.e. from 12.4.84. Before that date, he could not ^{even} have been considered for the post reserved for direct recruits because the 1982 Recruitment Rules did not permit that. Hence the grievance of the applicant that he should have been regularised with effect from 1.7.1982 is not justified. Mr. Vashi submitted before us that the appointment of respondent No.4 Pawar was not according to the rules regarding promotion. Even after hearing him at length we do not find that his submission is valid. As already pointed out he was recommended by the DPC for promotion as SDSCO. He was appointed on temporary basis because we were told that both the posts were

temporary. Hence use of the word temporary in the order of promotion of respondent No.4 does not make his appointment or the order invalid. Though he was not appointed on regular basis from the beginning, his appointment was regularised by the DPC in its meeting held on 9.8.1984. We are unable to accept the submission of the learned advocate for the applicant that the applicant's appointment which was ad-hoc was more legal than the appointment of Respondent No.4 which was described as temporary. His appointment had to be temporary because the post itself was temporary. The applicant's appointment was ad-hoc because according to the recruitment rules then in force, he could not even be considered for the post which was to be filled up by direct recruitment. The fairness of the Government is evident from the fact that after the rules were amended, applicant's promotion was regularised retrospectively with effect from the date of amendment of rules i.e. with effect from 12.4.84.

12. Mr. Vashi then relied on a number of rulings. The first case he relied upon was Narendra Chadha Vs. Union of India and Others. (AIR, 1986 SC, 368). He has specially relied on the following observations in para 13 of the judgment:

"13. It is now well-settled that it is permissible for the Government to recruit persons from different sources to constitute a service. It is also open to it to prescribe a quota for each source. Rules of recruitment framed on the above lines are perfectly legitimate and quite consistent with Arts. 14 and 16 of the Constitution. It is also true that when the Rules of recruitment prescribe recruitment from different Services in accordance with the specified quota the Government is bound to appoint persons to the Services concerned in accordance with the said Rules. The seniority of persons recruited from different sources will have to be regulated accordingly. So far there can be no controversy. But we are faced in this case with the problem of resolving conflicts which have arisen on account of a violent

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departure made by the Government from the Rules of recruitment by allowing those who were appointed contrary to the Rules to hold the posts continuously over a long period of time. The question is whether after such a long period it is open to the Government to place them in seniority at a place lower than the place held by persons who were directly recruited after they had been promoted, and whether it would not violate Arts. 14 and 16 of the Constitution if the Government is allowed to do so."

We do not think that the above observations are helpful to the applicant in any way because we are not faced with a situation which can be said to have arisen on account of any departure made by the Government from the rules of recruitment. In fact, in the present case, the authorities have followed the rules scrupulously. On the basis of the recommendations of the DPC they have promoted Respondent No.4, while they promoted the applicant on ad-hoc basis to the post which was reserved for direct recruits. We do not think that commitment of the authorities could have been more judicious and impartial. Then Mr. Vashi relied on S.C. Jain Vs. Union of India and Others, ATR 1986(2) CAT 346; S.S. Grover & Another Vs. Union of India, ATR 1986 (2)CAT 365; Ashok Gulati Vs. I.S. Jain & Others 1987(1) AISLJ 169 and M.L. Trivedi Vs. Union of India 1987(4) AT Cases 69. All these cases are relating to promotion on ad-hoc basis and based on the judgment of the Supreme Court in Narendra Chadha's case. As Narendra Chadha's case is not applicable to this case we do not think it necessary to refer all these judgments.

13. In the result we hold that the case of the applicant is devoid of any merits and hence we dismiss the application, with no orders as to costs.

(S.G. RAJADHYAKSHA)
MEMBER (A)

(M.B. MUJUMDAR)
MEMBER (J)