

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

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T.A.No. 99 of

198
1986

DATE OF DECISION 9th July, 1987.

Shri Takhtsinh A. Desai Applicant/~~xx~~

Mr. R.S. Mohite, Advocate for the Applicant/s.

Versus

Collector, Dadra & Nagar Respondent/s.

Naveli (U.T.) Silvassa & Others

1. Mr. R.S. Agarwal Advocate for the Respondent(s).

for Respondents Nos. 1 & 2

2. Mr. D.V. Gangal, Adv. for Respondents No. 3

CORAM:

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

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? No
3. Whether to be circulated to all Benches? No

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Transferred Application No. 99 of 1986

Shri Takhtsinh Abhesinh Desai,
Training Officer,
Agriculture Department
Dadra & Nagar Haveli,
Union Territories,
Silvassa.

... Applicant.

V/s.

1. Collector, Dadra & Nagar Haveli
(U.T.) Silvassa.
2. Administrator,
Dadra & Nagar Haveli,
(Union Territory),
Silvassa.
3. Shri R.D.Parmar,
Extension Officer, Agriculture,
Agriculture Department,
Silvassa.
4. Shri K.S. Gavit,
Agriculture Supervisor,
S.D.S.C.O.,
Silvassa-396 230.
5. Union of India. ... Respondents.

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

Appearance:

1. Mr. R.S.Mohite,
Advocate for the
applicant.
2. Mr. R.M. Agarwal,
Counsel for Respondents
Nos. 1 and 2.
3. Mr. D.V. Gangal,
Advocate for Respondent No.3

JUDGMENT

Dated: 9th July, 1987.

(PER: M.B. Mujumdar, Member(J))

The applicant had filed Writ Petition No.2239/1984
in the High Court of Judicature at Bombay on 6.6.1984 it is

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transferred to this Tribunal Under Section 29 of the Administrative Tribunal Act, 1985.

2. The applicant has challenged the final gradation list of Agriculture Supervisors prepared by respondent Nos. 1 and 2 and published on 25th May, 1984. By an order dated 7th June, 1984, the High Court had granted interim relief as per prayer clause (d) and had restrained Respondents Nos. 1 and 2 from acting on or changing the service conditions of the applicant on the basis of that list. However, after hearing the other side, the High Court has vacated that interim order on 20.7.1984. The High Court has, however directed that all further promotions will be subject to the decision in the Writ Petition and the promotees should be expressly informed accordingly.

3. The main facts relevant for the purpose of the decision of this case are ^{these} stated below:- In 1968, the applicant was appointed as Assistant Agriculture Teacher, in one of the Primary Schools under the control of the Administration of Dadra and Nagar Haveli at Silvassa. In May, 1982 he was given 316 days Extra-Ordinary Leave for completing his graduation in Agriculture on condition that he should join the Administration as Agriculture Teacher. On 24.12.73 there was an advertisement for the post of Agriculture Supervisor (Farm) in the pay scale of Rs.210-380. The educational qualification prescribed was B.Sc.(Agriculture). As regards age, it was mentioned that the candidate must not be below 18 years and above 25 years of age on 1.1.1974. The upper age limit was relaxable by five years in the case of Scheduled Castes/Scheduled Tribes candidates, but if suitable candidate was not available from SC/ST then the post was to be treated as unreserved. The applicant

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fulfilled the educational qualification, being B.Sc. (Agriculture). However, as his birth date was 11.10.1942, he did not fulfil the condition regarding age. Still he applied for that post. On 5.2.1974 the Selection Committee consisting of the Chief Agriculture Officer, Agriculture Officer and Secretary to the Administrator interviewed the applicant along with eleven other candidates. No suitable candidates from SC/ST was available. The Committee prepared a select list of six candidates in order of merit and it was like this:- (1) Shri T.A. Desai; (2) Shri K.G. Patel; (3) Shri R.D. Parmar; (4) Shri N.D. Modi; (5) Shri B.N. Shah and (6) Shri S.R. Patel. In the meanwhile the applicant was appointed as Assistant Teacher (Agriculture) in the High School at Silvassa by relaxing his age. However, the applicant was not appointed as Agriculture Supervisor (Farm) mainly because he did not fulfil the condition regarding age. Mr. Patel did not join though he was offered the post. Respondent No.3 Parmar was, therefore, appointed to that post by an order dated 2.3.1974 and he took charge of that post on 7.3.1974.

4. By an application dated 18.7.1974 the applicant requested that he should be appointed either by transfer or promotion to the post of Extension Officer(Agriculture) in the scale of Rs. 210-380. It may be noted that the scale of pay of Agriculture Supervisor (Farm) was also the same at that time. But no reply was given to that application, though there were notings both for and against the applicant. However, by an order dated 23.11.1974 the applicant was transferred and appointed as Extension Officer(Agriculture) in the scale of Rs. 425-560. The applicant joined that post on 26.11.1974.

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5. On 10.12.1979 Respondent No. 1 circulated a provisional gradation list of Agriculture Supervisors as it stood on 1.1.1979. In that gradation list Respondent No.3 Parmar, was shown at serial No.3 and the applicant was shown at serial No.5. Respondent No.4(four), Gavit, was shown at serial No.4, but we are now not concerned with him because he is not in service any more. The applicant submitted a representation dated 9.1.1980 against showing him below Respondent Nos. 3 and 4. Thereafter, another provisional list as on 1.1.1981 was prepared and circulated on 2.11.1981. In that second provisional list respondent No.3 Parmar, was shown at serial No.3, while the applicant was shown at serial No.5. The applicant again submitted a representation dated 13.12.1981 against that list. By an order dated 28/29-3-1982 the applicant and respondent No.3 Parmar, were confirmed as Agriculture Supervisors with effect from 26.11.1974 and 7.3.1974 respectively. These were the dates on which they ~~were~~ ^{had} taken charge of the post. By that order five Agriculture Supervisors were confirmed. In that order the name of Respondent No.3 was at serial No.3 while the name of the applicant was at serial No.5. On 5.12.1983 the third provisional gradation list of Agriculture Supervisors as on 1.12.1983 was circulated. In that list the applicant was placed at serial No.3 while the Respondent No.3 Parmar, was placed at serial No.4. Now it was the turn of Respondent No.3 to make a representation and he made a representation on 13.12.1983 against putting him below the applicant. After considering all the representations and objections, Respondent No.1 prepared a final gradation list of Agriculture Supervisors as on 1.12.1983 and circulated it on 25.5.1984. In that list Respondent No.3, Parmar's name

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appears at serial No.3 while the name of the applicant is at serial No.5. Being aggrieved by that seniority list the applicant filed the Writ Petition in the High Court on 6.6.1984 and as already pointed out it is transferred to this Tribunal.

6. Respondents No.1 and 2 have resisted the petition by filing the affidavit of Mr. M.P. Patel, Assistant Secretary to the Administrator, Dadra and Nagar Haveli on 6.7.1984 and 29.12.1986. Respondent No.3 Parmar, has also filed his written statement and the applicant's rejoinders are also on record.

7. From the arguments advanced before us and the facts and the circumstances of this case, the following points arise for our consideration:-

- 1) Whether the applicant was appointed as Extension Officer (Agriculture) on the basis of the interviews held on 5.2.1974 for the post of Agriculture Supervisor(Farm) and the select list prepared by the Selection Committee?
- 2) Whether the final gradation list of the Agriculture Supervisors as it stood on 1.12.83 is improper or illegal on any ground?

Our findings on both the points are in the negative.

8. For getting seniority over respondent No.3 Parmar, the applicant must show that he was eligible for appointment as Agriculture Supervisor (Farm) for which applications were invited by the advertisement dated 24.12.1973. As already pointed out, in the advertisement it was made clear that the candidate must not be below 18 years and above 25 years of age as on 1.1.1974. Admittedly, the applicant was born on 11.10.1942 and hence his age as on 1.1.1974 was more than

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31 years. According to the advertisement the upper age limit was relaxable for five years in the case of Scheduled Caste/Scheduled Tribe candidates. The applicant does not fall in any of these categories. In this connection reference may be made to the Recruitment Rules. Rule 3(b) lays down that the classification, the scale of pay, the method of recruitment, age limit, qualification and other matters relating to the recruitment in a particular cadre shall be as specified in Appendix-A. There is a proviso to this sub-rule which says that the upper age limit prescribed for initial recruitment may be relaxed in the case of candidates belonging to the Scheduled Caste and other special categories of persons in accordance with the orders of the Central Government issued from time to time. Entry No.13 in the schedule is in respect of the post of Extension Officer(Agriculture). In column 8 it is indicated that the age limit for the post was between 18-25 years, which is consistent with the advertisement published on 24.12.1973. According to Rule 3(b) the upper age limit of 25 years was not relaxable in the case of the applicant because he does not belong to the Scheduled Caste/Scheduled Tribe or any other category of persons notified by the Central Government. Hence the applicant's application for the post of Agriculture Supervisor (Farm) should not have been placed before the Selection Committee. We were informed that the post of Agriculture Supervisor (Farm) and Extension Officer (Agriculture) are equal in status, scale, etc. Hence inclusion of the name of the applicant in the select list prepared by the Selection Committee was itself contrary to the rules and hence illegal.

9. Mr. Mohite, the Learned Advocate, for the applicants submitted that as the applicant was appointed as Extension Officer (Agriculture) on 23.11.1974, it should be deemed

that the Government had relaxed the age limit in his case. But there is nothing on record to show that the Government had relaxed the condition regarding age with regard to the age of the applicant, apart from the fact that the recruitment rules do not provide for relaxation of age.

10. It would be relevant to refer to the factual position in this respect. On 7.2.1974 the Agriculture Officer put up a note for appointing the applicant as Agriculture Supervisor. The proposal was rejected by the Higher Authority by directing that the post may be offered to the second candidate in the select list. On 13.2.74 another note was put up by the Agriculture Officer to the same effect, but it was also turned down by the Chief Agriculture Officer on the next day itself. On 18.7.1974 the applicant submitted an application for appointing him as Extension Officer (Agriculture) by transfer or promotion. The Agriculture Officer recommended his case by his note dated 25.4.1974, but the Collector rejected the proposal on 7.8.74. The Collector had directed that the Agriculture Officer may also be informed that the case of the applicant should not be opened again. Prospects of the applicant changed thereafter. It is the case of the respondents (Para 7 of the additional reply on affidavit of M.P.Patel, Assistant Secretary) that in August, 1974 the applicant's Brother-in-law, D.M. Parmar, was appointed on deputation from Gujarat State as Agriculture Officer under the Administration. At that time the Secretary to the Administrator who had rejected the proposal to appoint the applicant as Agriculture Supervisor was transferred and a new Secretary took charge in or about October 1974. Taking advantage of the change in the situation the Brother-in-Law of the applicant, managed, to issue the appointment order dated 23.11.1974 (Ex.'B'). It is stated in the affidavit of Patel that the note proposing the

appointment of the applicant by Parmar as well as the endorsement of the Collector by which the same was accepted are not available with the Administration and are missing from the file. Exhibit 'B' shows that the order of appointment was passed on the basis of the Collector's orders on note dated 23.11.1974. The order shows that the applicant was transferred and appointed as Extension Officer (Agriculture). The applicant was previously working as Agriculture Teacher in the High School at Silvassa and hence he could not have been transferred as Extension Officer (Agriculture). This was not disputed ^{by} ~~on~~ either side. In ordinary course the applicant should not have been transferred and appointed as Extension Officer (Agriculture), but we are not so much concerned with the legality of this order. What is important is that this order nowhere says that the applicant was appointed on the basis of the selection made by the Selection Committee. In other words his appointment will have no connection with the select list prepared by the Selection Committee on which the applicant is relying for the purpose of seniority. As already pointed out the consideration of the application of the applicant for the post of Agriculture Supervisor (Farm) as well as the inclusion of his name in the merit list was contrary to rules and hence illegal. We, therefore, answer the first point in the negative.

11. The applicant has challenged the final gradation list of the Agriculture Supervisors as it stood on 1.12.1983, ^{on} the assumption that he was appointed on the basis of the select list prepared by the Selection Committee for the post of Agriculture Supervisor (Farm). As shown above this assumption is wrong. Hence the question of giving him

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seniority above respondent No.3 Parmar, does not arise.

12. Moreover Respondent No.3 Parmar, was appointed as Agriculture Supervisor (Farm) on 2.3.1974 and he took charge on 7.3.74 while the applicant joined as Extension Officer (Agriculture) on 26.11.1974. Respondent No.3 Parmar, was appointed as he was selected by the Selection Committee on the basis of the interviews held on 5.2.74. Though the name of the applicant was ^{at} serial No.1 in that list he was not appointed on the basis of that select list and ^{hence} he cannot take advantage of that fact, ~~of his appointment~~. Rightly or wrongly the applicant was appointed by another order dated 23.11.74 but this will not entitle him to claim seniority above Respondent No.3 Parmar.

13. The next grievance of the applicant was that in the third Provisional Gradation List circulated on 5.12.83 he was placed at serial No.3 while Respondent No.3 was placed below him at serial No.4 and hence before disturbing that seniority list to his disadvantage he should have been given an opportunity of being heard. But in the first provisional gradation list dated 10.2.79 as well as in the second provisional gradation list dated 2.12.1981 the applicant was placed at serial No.5 while Respondent No.3 was placed at serial No.3. It was on the basis of the applicant's representations that in the third provisional gradation list he was placed above Respondent No.3. Then Respondent No.3 who felt aggrieved for the first time submitted a representation. The Office Memorandum dated 25.5.1984 attached to the Final Gradation List shows that the objections and representations against the gradation list were considered before preparing the final gradation list.

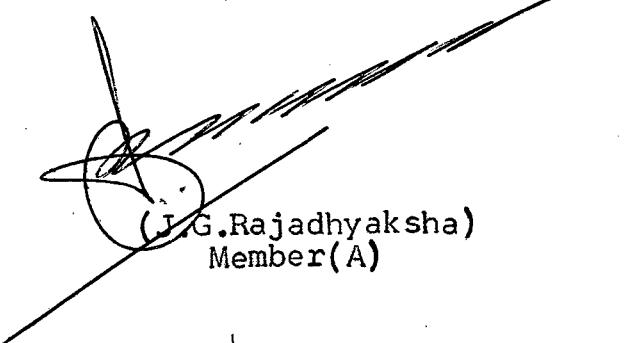
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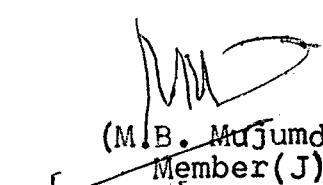


Applicant's objections for putting him below respondent No.3 were already before the authorities in the form of his previous representations. We, therefore, hold that the final gradation list is not liable to be struck down on any ground.

14. Mr. Mohite had cited some authorities to show that the seniority list cannot be changed without hearing the persons likely to be affected by the change. But in most of these cases the changes in the seniority lists were made in the final gradation list. But that is not the case in the case before us. In the present case changes were made in the 3rd provisional gradation list and that too after considering the representations and objections which were filed. We are of the view that while making changes in the gradation list it will not be necessary to hear each employee personally before making the changes. Giving an opportunity to make representations and considering them will be enough. In this case as the memorandum attached to the final gradation list shows that representations made were considered. We, therefore, find no infirmity in the final gradation list and answer the second point in negative.

15. In result we dismiss the application, with no order as to costs.


(J.G. Rajadhyaksha)
Member(A)


(M.B. Majumdar)
Member(J)