

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

O.A. NO.1115/1996

Thursday, the 18th day of October, 2001.

HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN (J)
HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

1. B.S. Ghumare,
Govt. quarter No.1,
Behind Collector Office,
Silvassa-396 230.
2. Premabhai Durlabhbhai Patel
At P.Silvassa-396 230.
3. Madhusudan D Pathak,
Govt. qtr. Near Power House,
Silvassa-396 230.
4. Narsinh Bhai D.Rohit,
Govt. qtr. Near High School.
Silvassa-396 230.
5. Ramanbhai H Patel.
At and P. Rakholi
Dadra and Nagar Haveli
Union Territory.
6. Prabhatsingh Laxmanbhai Daru,
Govt. qtr. oppo convent school,
Silvassa-396 230.
7. Govanzbhai D.Rohit
Umarkhi Road,
Silvassa-396 230.
8. Thakorhai B Patel,
Govt. qtr, Near Power House,
Silvassa-396 230.
9. Gulabhai Shankarji Desai,
Govt. quarter Near
Children park,
Silvassa-396 230.
10. Naganiya G Shaikh,
Government Qtr.
Silvassa-396 230. Applicants

By Advocate Shri S.P. Saxena.

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Versus

1. Union of India through the Administrator, Union Territory of Dadra and Nagar Haveli, Silvassa-396 230.
2. The Development Commissioner, Union Territory of Dadra and Nagar Haveli, Silvassa-396 230.
3. Shri Rameshchandra K Mohile, Govt. quarters, Near Pawn House, Silvassa-396 230.
4. Shri Sadruddin Hussain Pradhan, Govt. quarters, near Panchayat Mandal, Silvassa-396 230.
5. Shri Amanulla D. Pathan, Govt. Quarters Near Primary School, Silvassa-396 230.
6. Shri Vinod H Desai, Govt. Quarters Near Primary School, Silvassa-396 230.
7. Shri Rameshchandra S Oza, Govt. quarters Housing Society, Silvassa-396 230. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R (ORAL)

Hon'ble Smt. Shanta Shastry. Member (A)

The applicants in this case are challenging the notification dated 24.4.1996 as well as the circulars dated 25.4.1996, 09.5.1996 and 18.10.1996. The applicants have further prayed for setting aside the impugned order dated 21.8.1996 promoting the private respondents No.3 to 10 and to direct the respondents to

fill up seven vacancies in the post of Divisional Accountants as existed prior to the amended recruitment rules.

2. The applicants are presently working as Assistants in the pay scale of Rs.1400-2300. From the post of Assistant the next post of promotion is the Divisional Accountant/Senior Accountant in the scale of Rs.1400-2600 and thereafter further promotion to Group 'B' post. However, vide the impugned notification dated 24.4.1996 the post of Divisional Accountant/Senior Accountant has been down graded to that of Accountant in the pay scale of Rs.1400-2300 i.e. the same pay scale as that of Assistant.

3. The applicants are aggrieved that by changing the recruitment rules and by down grading the post of Divisional Accountant/Senior Accountant the applicants are being deprived of further promotions and also it would be difficult for them to get further promotion due to new conditions for the post of Accountant a written examination has been prescribed. The applicants are objecting to this on the ground that most of the applicants had reached the age of 50 years and above at the time of filing of the OA and they had put in more than 30 years of service and it would ~~not~~ therefore be ^{harsh} in the interest of such applicants to appear for the written examination and to get the same pay scale as they are drawing at present, after passing the said

examination. According to them it would be futile exercise as far as the applicants are concerned. In short they have been adversely affected by the new recruitment rules which according to them are illegal and arbitrary.

4. Immediately after issuing of the amended recruitment rules for the post of Accountants, the respondents issued a circular dated 25th April, 1996 giving option to the employees to switch over to the common cadre of Accountants. The date for exercising option was extended upto 31st October, 1996. The applicants filed this OA on 29th October, 1996. At the first hearing on 01.11.1996 the respondents were directed to extend the period for filing of option by a period of one month or till the respondents file their reply in this case. The respondents have filed their reply on 04th February, 1997 and the OA was subsequently admitted on 21.6.1997. Thus, the applicants had an opportunity of exercising their option till 05th February, 1997 after the filing of the reply by the respondents. However, the applicants have failed to exercise their option within the stipulated period. The learned counsel for the applicants now prays that the date for exercising of option may be extended further to enable the applicants to file their option.

5. The respondents submit that it is the prerogative of the respondents to frame the recruitment rules and they have amended the recruitment rules through the competent authority and the same cannot be questioned and the Administrator of Dadra & Nagar Haveli ~~who~~ is the competent authority for framing or amending the recruitment rules of Group 'C' and 'D' employees without consultation with the Union of India in the interest of smooth functioning of administration. Further for the post of Accountant normally a written examination is prescribed. Therefore, such a test is now prescribed by amending the recruitment rules of 1987. There was nothing wrong, in fact, it is better for the administration. Further, it is not that the applicants were not given any opportunity. Option was provided for them to cross over to the common cadre. Sufficient time was granted to exercise the option and the same was also extended by this Tribunal, it cannot be extended indefinitely. The applicants having failed to exercise the option, there cannot be any further extension at this stage.

6. We have heard the learned counsel for both the parties and have perused the pleadings. We agree with the learned counsel for the respondents that the applicants were given adequate opportunity to exercise option to come over to the common cadre of Accountants

which they failed to do. In the circumstances, we cannot accept their request for extending the option further.

7. We note that in the recruitment rules published vide notification dated 24.4.1996 there is a power for relaxation of the rules. The learned counsel for the respondents submitted that there are no instructions available with the administration regarding grant of exemption to the employees who have attained the age of 50 years and above in the matter of written examination. We do appreciate the government's stand that there has to be a written examination, as such examination is prescribed for all posts of Accountants in other departments also. However, considering that the applicants have crossed the age of 50 years, which is averred by the learned counsel for the applicants and they ~~they~~ might have put in some service in accounts matters, we feel that ^{there} is a case for considering the applicants' request for exempting them for some relaxation in the matter of written test prescribed, as the power to relax is available with the respondents. This is a matter, which the respondents can consider. We therefore, direct that the respondents shall consider the case of the applicants on merits, perhaps fixing some criteria, if necessary and take an appropriate decision in the matter of granting relaxation in regard to the written examination. This shall be done within a

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period of four months from the date of receipt of copy of this order. The OA is disposed of accordingly with no order as to costs.

Shanta S-

(SMT. SHANTA SHASTRY)
MEMBER (A)

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

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