

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.
~~Transfer Application No.~~

902/96

Date of Decision : 20/12/96

Shri Kirit D. Vaja

Petitioner

Shri G.S. Walia/Shri I.J. Naik

Advocate for the
Petitioners

Versus

Union of India & Others

Respondents

Shri V.S. Masurkár, CGSC

Advocate for the
respondents

C O R A M :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri M.R. Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(B.S. Hegde)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, GULESTAN BUILDING NO. 6
PREScot ROAD, FORT, MUMBAI 400001.

O.A. 902/96

Dated this 26 day of December 1996.

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri M.R. Kolhatkar, Member (A)

Shri Kirit D. Vaja
C-2, Govt. quarters
Fort Area,
P.O. : Moti Daman
Pin Code : 396 220

(By advocate Shri G.S.
Walia alongwith
Shri I.J. Naik, Advocate) Applicant

v/s

- 1) Union of India, through
The Secretary, Ministry
of Home Affairs,
Central Secretariat
North Block, New Delhi.
- 2) The Administrator of U.T.
of Daman and Diu
Administrator's Secretariat
Fort Area
P.O. : Moti Daman
- 3) Mrs. Pooja Gupta (Joshi)
U.T. Civil Service Officer
Secretariat, Fort Area
P.O. : Moti Daman

(By advocate Shri V.S.
Masurkar, Central Govt.
Standing Counsel) Respondents

ORDER

[Per: Shri B.S. Hegde, Member (J)]

In this O.A., the applicant has challenged the impugned order dated 9-9-1996 issued by the Respondents in which it has been ordered that Mrs. Pooja Gupta, a UT Civil Service Officer shall work as Assistant Director of Transport in the UT Administration of Daman and Diu, at Daman with effect from the date of her joining service in this Administration etc. The applicant has not made out any representation against the order of the Respondents and filed this O.A. on 9th September 1996 itself and the Tribunal vide its order dated 10-9-1996 passed an ex-parte interim order on the basis of the submissions made by the applicant's counsel Shri G.S. Walia alongwith Shri I.J. Naik stating that the service of the applicant has been regularised with effect from 23-11-1992 as Motor Vehicle Inspector. The recruitment rules for the post of Assistant Director of Transport is by way of selection and the method of recruitment is by promotion failing which by transfer on deputation and failing both by direct recruitment and in the case of recruitment by promotion, a Motor Vehicle Inspector with three years' regular service in the grade is eligible to be considered for promotion. The applicant states that he made representation to the competent authority vide dated 11-7-1994 and 21-12-1995 stating that he should be considered

for the post of Assistant Director of Transport but no reply has been received from the Respondents. The applicant also made a submission that Mrs. Pooja Gupta has not taken a charge of the post of Assistant Director so far as on 10-9-1996; accordingly, status-quo order, if Mrs. Pooja has not taken the charge, was passed as on 10-9-1996 for a period of 14 days. The Respondents took time to file reply and they filed their reply on 23-10-1996.

2. In the reply, the Respondents submitted that the applicant has failed to make out any case in the pleadings. The impugned order passed by the Respondents on 9-9-1996 is neither applicable to the applicant nor entitles the applicant for any interim order and the application is required to be dismissed in limine. It is true that the applicant is working as a Motor Vehicle Inspector and he is challenging the impugned order dated 9-9-1996 by which Mrs. Pooja Gupta has been ordered to work as Assistant Director of Transport. The applicant was promoted on ad-hoc basis to the post of Motor Vehicle Inspector with effect from 12-2-1992 but later on regularised on 23-11-1992. It is true that the applicant has put in three years' service in the grade of Motor Vehicle Inspector and is eligible to be considered for promotion to the post of Assistant Director of Transport after completion of three years' service; however, the post of Assistant Director of Transport became vacant with effect from 1-2-1993 due

to retirement of the incumbent. Thereafter, the post was manned by other officers of the Administration since the applicant was not eligible at that time when the vacancy occurred. According to the recruitment rules notified on 12-7-1984, the post of Assistant Director of Transport is to be filled in by promotion failing which by transfer on deputation failing both by direct recruitment. The applicant has been promoted on regular basis to the post of Motor Vehicle Inspector with effect from 23-11-1992 and he completes the qualifying service of three years on 23-11-1995 and he became eligible for promotion only on 23-11-1995 for the post of Assistant Director and the post fell vacant in the year 1993.

3. Heard the learned counsel for the parties and perused the pleadings. The contention of the learned counsel for the applicant is that he is eligible to be considered for the post of Assistant Director of Transport and the order passed by the Respondents dated 9-9-1996 is contrary to rules and the same be set aside. It is not the contention of the applicant that the impugned order passed by the Respondents in any way violates the recruitment rules or the appointment made by the Respondents. The posting of Mrs. Pooja Gupta is not in accordance with the recruitment rules and no eligibility was considered for promotion from the feeder grade when the vacancy occurred in 1993 and other UT Civil Officers have been

posted from time to time and it cannot be said that the post should be kept vacant for an indefinite period. The recruitment rules for the post of Assistant Director of Transport was notified by the erstwhile Government of Goa, Daman and Diu; thereafter, the Administration of Daman and Diu decided to re-notify the recruitment rules since there is only one single post in the feeder grade and the method of recruitment cannot be kept 100% by promotion. As per the guidelines of the Government of India, the feeder posts should range from 3 to 5 times as the primary method of recruitment. In the case of single post in feeder grade, the guidelines provide that the method of recruitment should be composite i.e. promotion/transfer on deputation thereby the departmental Motor Vehicle Inspector with 3 years' regular service shall also be considered alongwith outsiders. The proposal for framing the Recruitment Rules has been forwarded to the Administrative Ministry i.e. the Ministry of Surface Transport on 4-9-1996 (Exh. R-1). On approval of the rules by the Union Public Service Commission who is competent to approve Rules for Group 'A' and 'B' posts, the proposal for filling up the post on regular basis will be initiated and the applicant will also be considered alongwith the outsiders who are eligible to be considered. Mrs. Pooja Gupta, an UT Civil Service Officer who is posted as Assistant Secretary under the Administration is only ordered to work as Assistant Director of Transport and

this is only a stop gap arrangement, and not appointed in accordance with the rules till the rules are finalised and recruitment/promotion are made in accordance with the rules. It is well settled principle that no officer can claim promotion to higher post as a matter of right by virtue of seniority from the date his juniors have been promoted. It is only when the process of selection is vitiated on the ground of malice or malafide or similar grounds, in that circumstances, the order of promotion can be challenged. The applicant has not urged any of such grounds in the O.A. His only contention is that he should have been considered for the post of Assistant Director as he has completed 3 years of qualifying services in 1995. As stated earlier, the question to be seen here is whether ~~other~~ Mrs. Pooja Gupta, any one has been appointed in accordance with the existing rules ignoring the claim of the applicant ? The answer is in the negative.

4. In the result, the contention of the applicant is not found to be based on merit and our interference is not called for to set aside the impugned order of the Respondents vide dated 9-9-1996 against which he has not made any representation to the competent authority; instead, he filed this O.A. which is contrary to Section 20 of the A.T. Act. In the circumstances, we do not see any merit in the O.A. and

the same is therefore dismissed at the admission stage itself. The C.P. 88/96 filed by the applicant stands disposed of. No order as to costs.

M.R.Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

ssp.