

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 802/1996

DATE OF DECISION: 30/03/2001

Shri M. R. Ingale

Applicants

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & 2 Ors.

Respondents.

Shri R.K.Shetty

Advocate for
Respondents.

CORAM:

Hon'ble Shri Kuldip Singh, Member(J)

Hon'ble Smt. Shanta Shastry Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.

19
(SHANTA SHASTRY)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 802/1996
DATED THE 30 DAY OF March 2001

CORAM: HON'BLE SHRI KULDIP SINGH, MEMBER(J)
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

M.R. Ingale,
Working as JUnior Engineer
(Electrical),
Under the Administration of
Union Territory of
Daman & Diu
... Applicant

By Advocate Shri G.S.Walia

V/s.

1. The Administrator,
Union Territory of
Daman and Diu
Moti Daman - 396 220
2. Chief Secretary,
Union Territory of
Daman and Diu,
Moti Daman - 396 220
3. Executive Engineer,
Department of Electricity,
Neelkanth Building,
Nani Daman - 396 220
... Respondents

By Advocate Shri R.K.Shetty for Respondents.

(ORDER)

Per Smt. Shanta Shastry, Member(A)

The applicant has appraoched this Tribunal with the grievance that he has not been considered for the post of Assistant Engineer in the scale of Rs.2000-3000 (RPS) against the Scheduled Caste quota. The post was de-reserved inspite of the fact that the applicant, a scheduled caste is available and eligible for promotion to the aforesaid post which ~~was~~ reserved for Scheduled Caste.

2. The applicant is a diploma holder in Electrical Engineering and belongs to Scheduled Caste. He was appointed as a Junior Engineer in the payscale of Rs.425-700 (RS). He was

confirmed as Junior Engineer after successfully completing two years of probation.

3. On 30/12/87, the respondents issued an order promoting S/s.M.M.Makwana and N.N.Tandel belonging to the general category as Assistant Engineer in the scale of 2000-3000 (RPS) on adhoc basis on the recommendation of DPC. The applicant's name was not considered for one of the reserved vacancies according to the 40point roster. Even though it was an adhoc promotion, one of the posts should have been reserved for Scheduled Caste. It is the contention of the applicant that it is the practice of the respondents to make adhoc promotions though the posts are permanent and regular vacancies exist. Also these adhoc promotions are continued beyond six months. The applicant had filed OA-603/91 against non consideration of his name for promotion against reserved vacancy. The OA was decided by order dated 1/6/95 and the respondents were directed to consider the case of the applicant against the quota reserved for SC category if necessary. The applicant has further contended that the caste of the applicant has been recognised as Scheduled Caste in Maharashtra as well as Union Territory of Daman and Diu.

4. The respondents in the written statements have taken the plea that the demand of the applicant involves a policy decision. The claim of the applicant for promotion to the post of Assistant Engineer(E) was considered by duly constituted DPC on 25/6/96 and was rejected in following terms:

"O.A. No.603/91 (Shri M.R.Ingle V/s. Union of India & Others). The direction of the Central Administrative Tribunal in para 2, of the said judgement and order dated 1/6/1995 was given due consideration. Shri M.R.Ingle belongs to Scheduled Caste Community of Maharashtra State. In his first appointment, he was considered as SC candidate but for subsequent promotion he is not

...3.

to be treated as SC in view of the M.H.A. Circular letter No.35/1/72-RU (SCTV) dated 2/5/1975. As such, his case was not considered by the DPC as against the reserved quota nor he was falling within the zone of consideration as a general candidate."

Accordingly, the claim of the applicant is analogous to the principle of res judicata or by the principle of constructive res judicata. The respondents have contended that the de-reservation was done vide order dated 17/7/1996 and was done persuant to delegation of powers for de-reservation conferred on the Administrator by the Government of India under the letter dated 20/12/1976 of the Ministry of Home Affairs.

5. The respondents have raised the issue as to whether the applicant should be treated as a scheduled caste in relation to the Union Territory of Daman and Diu or not, having regard to the fact that the applicant was a member of the Scheduled Caste Community in the State of Maharashtra at the time of his initial appointment but he cannot be so considered or declared being a migrant to the Union Territory of Daman and Diu from the State of Maharashtra in terms of para-2 of Government of India, Ministry of Home Affairs circular letter dated 2/5/1975 read with definition of SC/ST given in the introductory portion of the 8th edition of the brochure on SC/ST in services published by the Government of India. Also whether the applicant should be treated as Scheduled Caste or not is a policy matter and therefore the Tribunal has no jurisdiction over it. The application is not maintainable and is liable to be dismissed. The respondents invite our attention to the following decisions on policy matter where it has been held that while exercising the power of judicial review, the Court cannot act as an appellate authority or give directions in policy matters.

1. State of U.P. V/s. U.P. University College Pensioners Association-AI SLJ 1994 II - 52.
2. 1993 (1) S.C.C. - 47
3. 1990 (4) S.C.C. - 314
4. 1990 (Supp.) S.C.C. - 604
5. 1993 ii 11j 539 AND 543.
6. Paras 19,22 and 24 of A.I.R. 1989 (S.C.) 1899
7. Union of India V/s. Malika Arjun Rao AIR 1990 SC 1251
6. On merits the learned counsel for the applicant submits that as per the recruitment rules, the next promotional avenue for the junior engineers in the electricity department Daman is to the post of Assistant Engineer Group B. For promotion against two vacancies of the year 1987, the crucial date was 1/10/87 and all Junior Engineers fulfilling the requirement of 3/7 years regular service in the grade of Junior Engineer/Foreman Workshop in the case of degree holders and diploma holders or equivalent respectively were considered and promotions were made accordingly. According to the rules prevailing at that time, the applicant cannot now claim the benefit of the DPC held in 1987 as it is barred by limitation. The applicant joined the post of Junior Engineer on 26/2/1983. As on 1/10/87 and 1/10/89, he was not fulfilling the conditions of eligibility prescribed in the rules. He was not within the zone of consideration. Therefore, though one post was reserved for Scheduled Caste as per the 40 point roster, due to non availability of Scheduled Caste Candidates within the zone of consideration, the post was de-reserved.

7. On his appointment as Junior Engineer in the erstwhile Union Territory of Goa Daman & Diu he became a migrant and therefore his case falls under 2(ii) of the Ministry of Home Affairs circular dated 2/5/1975. Therefore the applicant cannot be considered for promotion.

8. The learned counsel for the applicant contends that since he was appointed as Scheduled Caste, he should have been considered for promotion against the post reserved for Scheduled Caste category. He is part of the department and he is a Government of India employee as such whether he is Scheduled Caste in Daman or not is immaterial. The applicant has also drawn our attention to a circular dated 10/7/1995 issued by the Administrator's Office Dadra and Nagar Haveli, Union Territory stating that policy on the lines of Goa Government to allow all the benefits of reservation to those SC/ST employees who migrated from other States/UTs of India has been formulated and it has been now ordered by the Administrator, Daman and Diu and Dadra and Nagar Haveli, that the Migrant SC/ST employees who have already been appointed prior to 1/1/90 will continue to enjoy all the benefits of the reservations as provided in the rules. Further, there is another letter dated 29/9/92, from the Ministry of Welfare, Government of India addressed to the Asst. Secretary to the Administrator of Dadra and Nagar Haveli stating that in respect of employment under Central Government there is no discrimination between Scheduled Castes and Scheduled Tribes of one state or another. In respect of employment under Union Territories also legally, the position would be the same. Thus a recognised SC of Maharashtra or any other state/Union Territory would be entitled to the benefits and facilities provided for Scheduled Caste in the

services under the Union Territory of Dadra and Nagar Haveli. In the light of these letters, the applicant contends that he is entitled to the protection of benefits accrued to him on account of his belonging to Scheduled Caste category when he joined service in 1983.

9. The respondents have rebutted this and they point out that the circular dated 10/7/1995 of the Administrator's Office Dadra and Nagar Haveli Union Territory is defective. The Administrator of Dadra and Nagar Haveli cannot take a decision for Union Territory of Daman & Diu and therefore this circular cannot be applied in case of D&D. Also the circular of the Ministry of Welfare dated 29/9/92 is with reference to the Union Territory of Dadra and Nagar Haveli only.

9. We have given careful consideration to the arguments advanced by the learned counsel for both the parties. In our view, the preliminary pleas regarding the Tribunal having no jurisdiction in policy matters and the Administrator of Daman & Diu being competent to de-reserve the post as per delegation of powers do not hold good as the case of the applicant was considered earlier in OA-603/91. Therefore we have to proceed from the stage where the Tribunal passed the orders directing the respondents to consider the case of the applicant against the quota which may be prescribed for Scheduled Caste category. Accordingly, the respondents have considered the case of the applicant and have rejected the applicant's demand on the ground that he is not to be treated as Scheduled Caste as he is a migrant in Daman. We note that earlier, the respondents had rejected his claim on a different ground. Therefore what now boils down to is to see whether the applicant cannot be considered for promotion because he is not Scheduled Caste in Daman.

10. According to us, the applicant was appointed on the basis of his being from the Scheduled Caste initially in 1983. That appointment was on all India Basis. Having been appointed, he cannot now be denied promotion on the ground that he is not Scheduled Caste of Daman. Also this is not his initial appointment or direct recruitment, it is a promotion. In our view, therefore, the question of considering him as not belonging to scheduled caste in Daman does not arise. It is not a case of a migrant. Also the Ministry of Welfare's circular dated 29/2/92 though is with reference to a query from the Union Territory of Dadra and Nagar Haveli, the underlying principle is the same whether it is for Dadra Nagar Haveli or any other Union Territory. It cannot discriminate among two Union Territories. Also the circular of 10/7/95 though is from the Administrator of Dadra and Nagar Haveli, we find that the copies have been forwarded to the Development Commission of Daman Diu and Dadra Nagar Haveli as well as to the Ministry of Home Affairs. There is no protest from the Adminsitrator of Daman and Diu. It obviously shows that the idea was also to cover Daman & Diu under the decision of this circular. This circular was issued on the lines of the policy decision taken by the Goa Govt. Considering that Daman Diu, Dadra & Nagar Haveli and Goa were one Union Territorys at one point of time, there cannot be different policy for different Union Territories however independent they may be. In our view therefore, the applicant has to be held as eligible for being considered against the Scheduled Caste quota. The respondents have also raised the point that the applicant was not eligible since he had not put in 7years after joining in 1983. However, it is to be noted that this Tribunal in OA-603/91 had

directed to consider the applicant for promotion. The respondents had not raised the point of eligibility service then. It cannot be raised now. The Tribunal's orders need to be complied with.

12. We accordingly direct the respondents to reconsider the applicant for promotion against the quota for Scheduled Caste. This may be done within a period of three months. OA is allowed. No costs.

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(SHANTA SHAstry)
MEMBER(A)


(KULDIP SINGH)
MEMBER(J)

abp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BENCH AT MUMBAI

CONTEMPT PETITION NO. 94 OF 2001

IN

ORIGINAL APPLICATION NO. 802 OF 1996.

M. R. INGLE
Working as
Jr. Engineer (Electrical)
Under the Administration of
Daman & Diu.

.....PETITIONER
/ORIGINAL APPLICANT

VERSUS

1. Shri O.P. Kelkar,
Administrator,
Union Territory of
Daman & Diu
Moti Daman -396 220.
2. Shri N. N. Tandel,
Executive Engineer,
Electricity Department,
Daman -396 210.

ALLEGED
PROPOSED CONTEMNERS/ORIGINAL
RESPONDENT.

AFFIDAVIT IN REPLY TO THE CONTEMPT PETITION NO. 94 OF
2001 OF THE APPLICANT.

MAY IT PLEASE YOUR HONOUR

1. I, Shri N.N. Tandel, Executive Engineer (Electrical), Administration of Daman and Diu, Electricity Department, Daman do hereby solemnly affirm and state that I am filing this Affidavit in compliance of the Judgement and order dated 30/3/2001.

2. I, further say that this Hon'ble Tribunal vide its Judgement and order dated 30/3/2001 had directed to reconsider the Applicant for promotion against the quota for Scheduled Caste, within a period of 3 months from the date of the receipt of the judgement and order dated 30/3/2001.

3. I, say that the Respondents had filed a Misc. Petition No.572 of 2001 in Original Application No.802 of 1996, wherein praying for extension of time for implementation of the said judgement and order dated 30/3/2001. And the Hon'ble Tribunal was pleased to reject the said M.P. on 26/7/2001.

4. I say that being aggrieved by the Judgement and order dated 30/3/2001, the Respondents had filed a Writ Petition bearing Stamp No.24420 dated 10/7/2001 in the Hon'ble High Court of Judicature of Bombay against the said judgement which has however not yet come-up on the board of Hon'ble High Court for hearing. Also the Applicant had filed a CAVEAT in the Hon'ble High Court bearing No.3498 of 2001. I further say that the implementation of the Judgement was not done in time on account of the Respondents pursuing the remedy of Appeal in the Hon'ble High Court of Judicature of Mumbai.

5. I further say that the Respondents has already conducted the Departmental Promotion Committee for reconsideration of the Applicant on 1/11/2001 i.e. before the receipt of the notice of contempt petition no.94 of 2001 of Hon'ble C.A.T., Mumbai and the promotion order promoting the applicant with effect from 1/11/2001 is issued on 21/11/2001. A copy whereof is enclosed

herewith and marked as AF-1 whereby the Administrator of Daman and Diu was pleased to promote Shri M. R. Ingle, Junior Engineer (Electrical) to the Group 'B' Gazetted post of Assistant Engineer (Electrical) in the pay scale of Rs.6500- 10500 . The promotion shall be subject to the out come of the Appeal filed in the Hon'ble High Court of Judicature of Mumbai.

6. I say that the Respondents have already been taken action for implementation of judgement and order dated 30/3/2001 of the Hon'ble Tribunal before the receipt of the notice of Contempt.

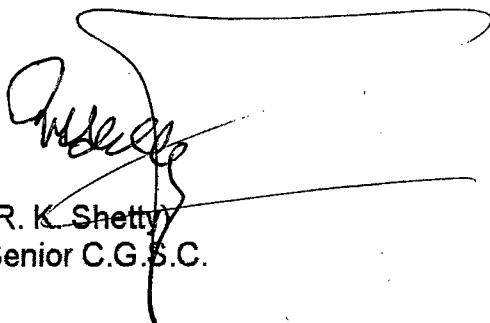
7. With reference to para 3 of the contempt petition I deny and states^{the contents thereof} that the respondents have already implemented the said judgement and order dated 30/3/2001. Hence, Respondents have not committed any Contempt of the Order of this Hon'ble Tribunal.

8. With reference to para 4 of the contempt petition I deny the contention of the Applicant and states that the respondents have already implemented the said judgement and order dated 30/3/2001.

9. I say that I as Executive Engineer,(Electrical), Electricity Department, Daman I am not the implementing authority of the Tribunal's Order.

10. I further say that this Affidavit is being signed and filed by me. I unconditionally apologize for the delay in implementation of the judgement and order dated 30/3/2001 of this Hon'ble Tribunal, I pray that in view of the above, this Hon'ble Tribunal be pleased to discharge me in view of the implementation of the judgement.

Solemnly Affirmed at Mumbai this 22nd day of November,
2001.


(R. K. Shetty)
Senior C.G.S.C.


(N.N. Tandel)
Executive Engineer (Elect)
Electricity Department, Daman.