



CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 346/99

Date of Decision: 08.10.2001

Shri Janaksinh Mohansinh Solanki

Applicant

Shri I.J. Naik.

Advocate for Applicant

Versus

Union of India & 3 others

.. Respondents

Shri V.S. Masurkar.  
Smt. V.N. Masurkar

Advocate for Respondents 1 to 3  
Advocate for Respondent No.4

CORAM: HON'BLE SHRI S.L. JAIN. 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 ✓

  
(SMT. SHANTA SHASTRY)  
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 346/99

THIS THE 08TH DAY OF OCTOBER, 2001

CORAM: SHRI S.L. JAIN. . MEMBER (J)  
SMT. SHANTA SHASTRY . MEMBER (A)

Dr. Janaksinh Mohansinh Solanki,  
R/o Dodia Falia,  
At P.O. Naroli,  
Pin Code 396 235.

... Applicant

By Advocate Shri I.J. Naik.

Versus

1. The Collector,  
Dadra & Nagar Haveli,  
At Silvassa,  
Pin Code-396 230.
  2. The Administrator,  
U.T. of Dadra and  
Nagar Haveli  
Secretariat,  
P.O. Silvassa,  
Pin Code-396 230.
  3. Union Of India through,  
The Secretary,  
Ministry of Home Affairs,  
Central Secretariat,  
North Block,  
New Delhi.
  4. Shri Vijaykumar B. Parmar,  
Residing at Dhapse P.O.  
Naroli, Via Bhilad,  
Union Territory of Dadra &  
Nagar Haveli.
- ... Respondents

By Advocate Shri V.S. Masurkar for R1 to R3.  
Smt. V.N. Masurkar for R.4

O R D E R

Smt. Shanta Shastri. Member (A)

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The applicant in this case is aggrieved that the respondents did not fill up the post of Extension Officer (Animal Husbandry) by direct recruitment, but instead decided to fill up the post by promotion, failing which by transfer on deputation and thus deprived the applicant of an opportunity of being selected to the post as direct recruit. He has therefore, made the following prayers (1) to declare the respondents' decision to fill in the post of Extension Officer by promotion failing which by transfer on deputation as illegal and not in accordance with existing recruitment rules of 1966; (2) to restrain the respondents to promote any one to the post of Extension Officer (AH); (3) to direct the respondents to fill in the vacant post of Extension Officer by appointment of the applicant based on his selection already made by regular departmental Selection Committee for a still higher post in the month of January 1995 when the applicant was within the age limit prescribed for the said post of Extension Officer; (4) to grant the applicant further and other reliefs as the nature and circumstances of the case and lastly to hold and declare that the appointment of Respondent No.4 Shri Vijayakumar B. Parmar to the post of Extension Officer (AH) in the Administration of Dadra and Nagar Haveli is illegal and untenable in law.

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2. The applicant had also sought an interim relief and it was provided that "promotion if any made to the post of Extension Officer (AH) will be subject to the out come of this OA.

3. Initially, the applicant was appointed as Veterinary Officer on daily wage basis for a period of 89 days with effect from 18.1.95 to 17.4.95 by the Administration of Dadra and Nagar Haveli against a vacant post of Veterinary Officer. The appointment was extended from time to time till 28.1.96. The extension was for a period of 89 days every time. Thereafter, the post was advertised through UPSC. the applicant applied for the selection through UPSC. Since the post was reserved for SC candidates, the applicant was not considered and on selection of SC candidate, the applicant's services could not be continued and stood terminated on 28.1.96 afternoon.

4. There was another post of Extension officer (AH) in the revised pay scale of Rs.1400-2300. The respondents decided to fill up the post by promotion. According to the applicant, he also represented to the respondents vide his application dated 28.10.98 to consider his past services rendered in the higher post and offer him the post of Extension officer. However, the respondents, under their impugned letter dated 5.3.99 rejected his request stating that as per the recruitment rules, the mode of recruitment for the post

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of Extension Officer is by promotion, failing which by transfer on deputation. The applicant has challenged the impugned letter.

5. It is the contention of the applicant that when the post of Extension officer fell vacant on 15.1.96 the recruitment rules of 1966 were still in force and therefore, according to those recruitment rules, the post should have been filled in by direct recruitment. The respondents, instead have followed the recruitment rules, which came to be amended later on in 1996 and further in 1999. The learned counsel for the applicant is relying on the judgment of the Supreme Court in B.L. Gupta and Another Vs. M.C.D. 1998 (009)-SC-0223. Wherein it was ruled that the vacancies which had occurred prior to Amendment of the Rules would be governed by the old Rules and not by the amended rules. He has cited further judgments of Supreme Court in Y.V. Rangaiah & Others Vs. J. Sreenivasa Rao & Others 1983 AIR (SC) 852-SC and P. Ganeshwar Rao & Others Vs. State of Andhra Pradesh & Others 1988 (Sup) SCC-0740-SC holding the same ratio.

6. According to the applicant, having served continuously for a long period, the applicant's services should have been regularised and he should have been absorbed as Veterinary Officer. The respondents had in the past regularised the daily wages services of 11 teachers and in respect of most of them had granted even

age relaxation. The respondents had also in the past regularised the services of nearly 29 teachers, who were earlier appointed on short term contract basis for a period of 6 months only. The applicant has also cited that four high school teachers who were earlier appointed on short term contract basis for a period of six months were also regularised by the official respondents. Further, the official respondents had selected the applicant for a higher post of Veterinary Officer, when the UPSC nominee came, the applicant was relieved. Actually the applicant was appointed as Veterinary Officer after due selection and he possesses requisite qualification for the post. At least the respondents should have accommodated him in the lower post of Extension Officer. The applicant, in support has produced a judgment in the case of Keshav Narayan Gupta and Others Vs. Jila Parishad Shivpuri (M.P.) and another 1988 (9) SCC 78.

7. The applicant has challenged the appointment of Respondent No.4. The applicant submits that the selection of Respondent No.4 was not as per the rules, because he was selected from among only three candidates and not from the required number of candidates. There must be at least 11 candidates for recruitment to one post. In support of this, the applicant has attached a copy of the Government letter dated 12.7.1989 addressed to the Employment Exchange Office, Government of India, New Delhi.

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8. The official respondents submit that the applicant was engaged on a daily wage and on a short term basis as Veterinary Officer. As soon as the regular incumbent joined in the said post, the applicant's services stood terminated. As per the recruitment rules for the post of Veterinary Officer, the recruitment has to be through UPSC. The applicant's selection on short term basis was not through UPSC and therefore, the applicant's services were rightly terminated. When he was engaged as daily wages worker, there was a specific condition that he will have no right to coach for regular appointment in future and it was purely a stop gap arrangements pending selection by UPSC on regular basis.

9. The official respondents state that the existing recruitment rules of 1966 which provide the method of recruitment by direct recruitment were subsequently amended vide notification dated 25.7.96 providing for recruitment by promotion failing which by transfer on deputation. The post of Extension Officer could not be filled up in the year 1996. Thereafter the recruitment rules were further amended on 22.7.99. The feeder cadre of Poultry Development Inspector has been merged in the grade of Extension Officer (AH) as per the recommendations of the 5th Pay Commission. According to these revised recruitment rules of 1999 the posts are to be filled 50% by promotion and 50% by direct

recruitment. Therefore, the vacancy of Extension Officer has been filled up as on ..8.2000 in accordance with the recruitment rules of 1999.

10. The applicant was relieved from daily wage appointment on 21.9.96 as the post of Veterinary Officer was filled up on regular basis by a candidate recommended by the UPSC. Based on his short term service in the post of Veterinary officer, the applicant cannot claim appointment to the lower post of Extension Officer (AH) as he was not selected for the post of Extension officer even on daily wage basis. In view of this position according to respondents the applicant has no case and he has no locus-standi for the post of Extension Officer (AH).

11. Respondent No.4 has also filed his written reply in which he has pointed out that initially the respondents had called for names from the Employment Exchange with required qualification of Degree in Veterinary Science & Animal Husbandry in order to fill up the post of Extension Officer (AH). Only one candidate was available with required qualification. Thereafter, the official respondents issued an open advertisement and in response to the said advertisement, applications were received. There was only four eligible candidates including Respondent No.4. They were interviewed and finally the Respondent No.4 was selected. Thus, the respondents did follow the method

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of direct recruitment. The question of not following the procedure or violating any ratio in regard to candidates to be called for interview by the official respondents does not arise. Respondent No.4 has produced a copy of the advertisement issued in the newspaper which was published on 23.4.2000 in Gujarat Samachar. Also the Respondent No.4 was appointed on 9.8.2000.

12. We have heard the learned counsel for the applicant as well as the respondents and have given careful consideration to the pleadings.

13. We find that the applicant was appointed on a daily wage basis for 89 days at a time and his services were terminated as soon as regular incumbent appointed through UPSC became available. Through amendment of the OA the applicant also raised the question of absorbing him in the post of Veterinary Officer or at least in a lower post of Extension Officer. As far as absorbing in the post of Veterinary Officer is concerned, it has to be noted that his appointment right from the day one was on daily wages basis on purely adhoc short term basis. His selection was not made through UPSC as required under the recruitment rules. Therefore such adhoc appointment does not give him any right for absorption on regular basis. he did not challenge his termination. It was only in 1998 he represented to regularise him either in the post of Veterinary officer or in the lower

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post of Extension Officer. He cannot be regularised in the post of Veterinary Officer. The judgment in Keshav Narayan Gupta cannot apply in this case. In that case there were no recruitment rules and the applicants therein had worked for 12 years without complaints. In the present case recruitment rules exist.

14. As regards regularisation in the post of Extension Officer is concerned, we agree with the respondents that the applicant cannot claim for absorption in the post of Extension officer as he had never been appointed even for a single day to the post of Extension Officer. Therefore, the question does not arise at all. His services in the higher post of Veterinary Officer cannot be taken for regularising him in the lower post.

15. As regards filling up the post of Extension Officer is concerned, strictly speaking, the applicant has no locus-standi at all, because his services with the official respondents had already been terminated as on 28.1.96. The post of Extension Officer fell vacant from 15.4.96. However, there is no denial that for filling up of the vacancy which arose on 1.5.96 the respondents should have followed the recruitment rules, which were in existence as on the date of vacancy and not the recruitment rules, which were amended later on. To that extent the respondents should have advertised the post for direct recruitment as per recruitment rules

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of 1967. However, we find that ultimately, the respondents have filled up the post through direct recruitment. This being the position, nothing survives. Further, the applicant has stated that he should have been granted age relaxation keeping in view his services as a daily wager in the post of Veterinary Officer. The post to be filled was that of Extension Officer. Therefore, the services rendered in another post cannot be counted for purpose of age relaxation. Therefore also the applicant was not eligible to apply for the post of Extension officer as he was already over aged, which he has not denied. In the facts and circumstances of the case, the application fails and is accordingly dismissed. No costs.

*Shanta F*

(SMT. SHANTA SHASTRY)  
MEMBER (A)

*S.L. Jain*

(S.L. JAIN)  
MEMBER (J)

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