

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 551/2000

DATE OF DECISION: 12/03/2002

Shi S.B.Desai

Applicant

Shri Sivaramakrishnan

-----Advocate for
Applicant.

Versus

Union of India & Ors.

-----Respondents.
Advocate for
Respondents.

Shri V.S.Masurkar R-1 to 3
Shri K.K.Malpathak R-4

Coram:

Hon'ble Shri Justice Ashok Agarwal, Chairman
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. ✓

Shanta S.
(SMT. SHANTA SHAstry)
MEMBER(A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:551/2000
DATED THE 27TH FEB, 2002**

**CORAM:HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)**

Surendrasinh B Desai,
Residing at Naroli,
Via Bhilad, (W.Rly),
Pin Code

... Applicant

By Advocate Shri Shivaramakrishnan

V/s.

1. Union of India, through
The Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block, New Delhi.
2. The Administrator,
Union Territory of Daman & Diu,
and Dadra & Nagar Haveli,
Silvassa Pin - 396 230
3. The Collector & Secretary,
(Education),
Union Territory of Dadra and
Nagar Haveli, Silvassa.
Pin - 396 230
4. Smt. Bharati behn Solanki,
At and Post Naroli, Brahmin Falia,
Dadra & Nagar Haveli,
Silvassa - 396 220

... Respondents

By Advocate Shri V.S.Masurkar for R-1 to 3.
By Advocate Shri K.K.Malphathak for R-4.

(ORAL)(ORDER)

Per Smt. Shanta Shastry, Member(A)

The applicant is aggrieved that though he had been selected for the post of Post Graduate Teacher by a regular Departmental Selection Committee (DSC) in 1998, the respondents appointed him on daily wage basis for a period of

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89 days at a time with a break. His period of such appointment was extended from time to time six times till 2/6/2000. Thereafter, an advertisement was published on 2/6/2000 inviting applications for the post, including in the subject of commerce laying down qualifications required for it as well as mentioning the payscale, etc. A selection was thereafter held and respondent no.4 was selected alongwith three others to the exclusion of the applicant. According to the applicant, the selection was not held properly. No written test was held as per the recruitment rules. Therefore the selection is vitiated. The applicant should have been considered instead having already been selected on an earlier occasion in 1998.

2. It is the contention of the applicant that his earlier selection held in 1998 was as per the recruitment rules and therefore he should have been given regular appointment. The learned counsel for the applicant has taken us through the Recruitment Rules for the post at page 53 to 56 of the paper book. He has also produced a notification dated 22/5/1993 regarding the constitution of the DSC for direct recruitment to Group 'C' and promotion from Group 'D' to Group 'C' in the Dadra & Nagar Haveli. He has produced another OM dated 7/6/99 prescribing the selection procedure for direct recruitment through Employment Exchange/Advertisement to Group B Gazetted and non Gazetted post in the Union Territory of Daman & Diu, Dadra and Nagar Haveli.

3. The learned counsel for the applicant submits that his earlier selection held in 1998 was set aside merely on the ground that the subject experts had not been present at

the time of the selection. According to the Recruitment Rules, the selection committee consists of Collector as the Chairperson, Executive Engineer (Elect. Divn) Dadra & Nagar Haveli, Deputy Conservator of Forests, General Manager, representative of the concerned department/office and Officer of SC/ST Community to be nominated by the Chairman and an officer of minority committee as Member. There is no mention of any subject expert being a Member of the Selection Committee. Therefore mere absence of the subject expert at the time of selection could not have made the selection invalid. It was wrong on the part of the respondents therefore to have treated this selection as a void selection and to have given the applicant only daily wage appointment.

4. Further the learned counsel contends that the second selection which was held in 2000 again was not as per rules. The selection committee adopted a procedure for assessing the candidate which was not prescribed as per the Recruitment Rules to which the learned counsel has already drawn our attention. According to the OM dated 7/6/99, for any recruitment/selection/appointment to Group 'B' 'C' or 'D' posts bot technical as well as non technical, the selection has to be necessarily on the basis of performance of candidates in the written test and interview and for these posts the following criteria should be adopted. Out of a total of 100 marks, 50 marks for written test, 20 marks for Academic Qualification and 30 marks for interview. As far as Group 'D' posts are concerned, only interview has to be held. The post of Post Graduate Teacher being Group 'C', the above pattern should have been followed by the DSC.

Instead the selection committee assigned 40 marks for the Academic Qualification, 20 marks for professional, 10 marks for experience and 30 marks for interview.

5. It is further contented by the learned counsel for the applicant that the respondent no.4 who was finally selected and given the appointment did not possess the requisite experience. All her experience was in a primary school whereas the applicant possessed two years experience in higher secondary school. The applicant also is better qualified in the sense he had secured more percentage of marks both in the Post Graduate as well as in the B.Ed and therefore the applicant was better suited than respondent no.4. The learned counsel also alleged that some malpractices were there even after the appointment order was issued to respondent no.4 who failed to join within the stipulated period of one month. On these various grounds the learned counsel for applicant pleads to quash and set aside the selection held on 2/6/2000 for Post Graduate Commerce.

6. The respondents submit that it is true that the applicant had appeared for selection in the year 1998 and had been selected. However, the subject experts from the NCERT who had been invited by the selection committee could not be present at the selection and therefore a conscious decision was taken at the level of the Administrator to hold a fresh selection. In the meantime, since applicant had already been selected, it was decided to appoint him on daily wage basis.

7. In regard to the second selection, the learned counsel for the respondents has produced the Minutes of the

meeting of the Departmental Selection Committee held on 27/6/2000. In all 56 candidates had applied for the post of Post Graduate Teacher Commerce. 29 candidates appeared for the selection and from amongst those, respondent no.4 was selected. After following the criteria as already pointed out and the applicant being less meritorious could not find a place. Therefore the respondents are justified in giving appointment to respondent no.4. The earlier selection was not considered valid. Moreover, the applicant having appeared in the second selection could not now challenge the validity of the selection held earlier. The learned counsel relies on the judgement in the case of State of Jammu and Kashmir V/s. Madanlal.

8. Also respondent no.4 represented by learned counsel Shri Malpathak submitted that she had actually put in her appearance in the Office of Assistant Director of Education as the present applicant was still holding the post. This was as on 27/9/2000. The learned counsel also pointed out that neither the applicant nor the respondent no.4 possessed the full experience of five years teaching in secondary school as per the recruitment rules. However, there is a provision in the recruitment rules to relax the condition regarding experience. The respondent no.4 had 10 years experience in primary school on a regular basis whereas the applicants' experience is only of two years and that too on a daily wage basis and not in a regular capacity. Therefore, the respondent no.4 being more suitable was rightly selected.

9. The learned counsel for the applicant once again urges that he had been rightly selected in 1998 and therefore

instead of holding a fresh selection, his earlier selection should be confirmed and he should be given the appointment.

10. The learned counsel for applicant relies on the judgement in the case of A.P.Agarwal V/s. Government of NCT of Delhi and Anr.of the Delhi High Court decided on 16/11/99 2000(1)SCC 600. It has been held therein that it is not open to the Government to ignore the panel which was already approved and accepted and resort to fresh selection process without giving any proper reason for resorting to the same. In the present case no doubt the selection was held, however the recommendation of the selection committee was not approved finally or accepted as is evident from the relevant notings in the Government files. The relevant portion is reproduced:-

Regarding commerce and economics subjects as 4 & 5 numbers of candidates respectively appeared for interview and as per Committee's gradation, the candidate topping in the list of commerce subject has been given 54 marks out of 100, and the candidate topping in the economic subject has been awarded 57 marks out of 100 these two candidates may be appointed. However, if it is felt that we may hold fresh interviews for these subjects alongwith other subjects through open advertisements, we may offer daily wages

appointment to the said two persons for a period of 89 days, to be extended further upto the close of the current academic session or till appointment of regular PGTs as the case may be, so that the studies do not suffer.

It is thus distinguishable from the judgement relied upon by the applicant, since Collector did not finally approve his selection he cannot have any legally enforceable right.

11. We have considered the arguments advanced by the applicant, the official respondents as well as the private respondent. In our considered view as far as the first selection is concerned, it was certainly not justified on the part of the respondents to have cancelled it merely on the ground of absence of the expert members. This has not been provided for in the Recruitment Rules. Moreover, the DOPT has laid down that the proceedings of the DPC shall be legally valid and can be acted upon notwithstanding the absence of any of its members who was duly called and for one reason or the other and there was no deliberate attempt to exclude him from the deliberations of the DPC and provided that majority of the members stated in the list of committee are present in the meeting. In our considered view this ratio would apply to the present Departmental selection committee also. We, however find that even though according to the applicant he was selected against a regular vacancy duly by a selection committee, the fact remains that the applicant was issued an appointment order which clearly stated that his appointment was purely on daily wage basis

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for a period of 89 days at a time. It was no doubt extended from time to time. The applicant did not challenge this appointment order at any time. He further appeared in the next selection. We cannot therefore now grant any relief to the applicant with reference to the earlier selection.

12. As far as the second selection held on 27/6/2000 is concerned, on going through various Recruitment Rules and the OM we have to hold that the selection was not as per the procedure laid down. There were certainly procedural flaws. Therefore the selection is vitiated and invalid. We accordingly quash and set aside the selection for the post of Post Graduate Teacher Commerce held on 27/6/2000 and the subsequent appointment order of respondent no.4. We order a fresh selection which shall be held strictly according to the Recruitment Rules and law within a period of three months from the date of receipt of copy of this order. In the meantime, the respondent no.4 shall be allowed to continue until the regular incumbent is selected through a fresh selection. OA is disposed of. No costs.

Shanta S

(SMT.SHANTA SHAstry)
MEMBER(A)

abp



(ASHOK AGARWAL)
CHAIRMAN