

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 345/2001

Date of Decision: 24.10.2003

Ramji Raghav Chauhan

Applicant

Shri S.R. Atre..

Advocate for applicant

Versus

The Administrator, UT of Daman & Diu

Respondents

Shri R.R. Shetty.

Advocate for Respondents

CORAM: HON'BLE SHRI S. BISWAS
HON'BLE SHRI MUZAFFAR HUSAIN

MEMBER (A)

MEMBER (J)

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


(S. BISWAS)

MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 345/2001

THIS THE 24th DAY OF OCTOBER, 2003

CORAM: HON'BLE SHRI S. BISWAS. .. MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN. .. MEMBER (J)

Ramji Raghav Chauhan,
aged about 56 years, presently
working as Incharge Headmaster,
Government High School (girs)
Diu-362 520. Applicant

By Advocate Shri S.R. Atre

Versus

1. The Administrator,
Union Territory of Daman & Diu,
Secretariat Moti Daman,
Daman.
2. The Director of Education,
Union Territory of Daman & diu,
Directorate of Education,
Secretariat, Moti Daman,
Daman. .. Respondents

By Advocate Shri R.R. Shetty.

O R D E R
Hon'ble Shri S. Biswas. Member (A)

Heard the rival counsel. In this OA the applicant has sought regularisation as Gujarati Teacher Grade-I with effect from 01.8.1981 and also promotion to the post of High School Head Master with effect from 1987 and 1989 with consequential benefits on the ground that as per order dated 22nd July 1981 the applicant was engaged as Assistant Teacher in Government Higher Secondary School (Girls) diu for teaching Gujarati for higher classes. But he has not been given the Teacher Grader-I and any subsequent promotion due in 1987 and 1989 as High School Head Master.

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2. The thrust of the problem is this, the applicant actually was working in a primary school in diu since 1966. He became Assistant Teacher there in 1974 in the primary school. When the local Government Higher Secondary School was in need of a Gujarati teacher, the services of the applicant was utilised with effect from 1981 as the applicant was a Master degree holder in Gujarati. Besides, he had requisite experience of teaching of three years as per the recruitment rules of the said higher secondary school vis-a-vis the claim of the applicant for Assistant Teacher in Gujarati with back service.

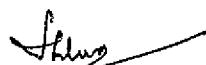
3. The thrust of the problem is that the applicant as per his own admission had opted to teach in the higher secondary school on his own after surrendering the right to claim salary and promotion. In other wards, it was more or less his honorary / voluntary teachership in Gujarati. He has now come up with this OA claiming retrospective appointment as Assistant Teacher in the said higher secondary school and consequential promotion.

4. Though it is not in dispute that the applicant holds the requisite qualification and he was utilised by the respondent authority as such as a teacher in Gujarati for higher classes from 1981 and had he been regularised as Assistant Teacher at that time, many

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promotion would have accrued to him by now. As he has himself opted to serve more or less on voluntary basis foregoing salary benefits, he cannot now claim after 22 years to give direction to accommodate him as regular teacher unless the authorities themselves consider him on merits. Several of his representations to this effect have been replied to. We find that he has come very very late. The latest representation is of 1999 whereas the incident for which he claims benefits is of 1981 and no prayer is made in the application for condonation of delay in the appropriate paragraph i.e. paragraph 3. The Tribunal came into existence in 1985. Learned counsel for the respondents has pointed that the issue relates to three years prior to coming into existence of this Tribunal.

4. In the circumstances the applicant having accepted the appointment on voluntary basis and having foregone the right of promotion, we find no merit in this OA and the same is dismissed accordingly. No costs.



(MUZAFFAR HUSAIN)
MEMBER (J)



(S. BISWAS)
MEMBER (A)

Gajan

In the Central Administrative Tribunal
Mumbai Bench

Review Petition No.80/2003)
(OA No.345/2001)

Coram : Hon'ble Mr.S. Biswas, Member(A)
Hon'ble Mr.Muzaffar Hussain, Member(J)

Shri R.R. Chauhan

-Vs-

Union Territory of Daman & Diu

For the applicant : Mr.S.R.Atre, Counsel

For the respondents : Mr.R.R. Shetty, Counsel
(were present at the time of hearing of the OA)

Date of Order :

ORDER (by circulation)

30.12.03.

Mr.S.Biswas, Member(A)

This Review Application has been filed by the applicant seeking review of the order dated 24-10-03 disposing of the said OA.

2. In the OA, the claim of the applicant was for a direction to the respondents to give him promotion to the post of Gujarati Teacher Gr.I w.e.f. 1-8-81 and further promotion to the post of High School Head Master w.e.f. 1987 or 1989 with attendant benefits. The applicant was originally appointed as Primary School Teacher under the Government of Goa, Daman and Diu on 16-6-66 and was promoted to the post of Assistant Teacher in February, 1974 and finally promoted as Middle School Head Master on 11-7-86. His case was that in 1981 there was a vacancy of Gujarati Teacher Gr.I in the Government High School, Diu. He was asked to perform the said duty as he was the only qualified candidate for the same. Thereafter also his such appointment was continued. He made several representations for grant of pay of the post of Gujarati Teacher Gr.I, but that was not acceded to. Ultimately, in 1999 his representation was replied, rejecting his prayer. Hence he filed the OA claiming the aforesaid benefits.

3. The OA was dismissed mainly on the ground of limitation and also on the ground that he himself had volunteered for the post.

4. In the R.A. the applicant has relied on a decision of the Hon'ble Supreme Court in the case of **Secretary-Cum-Chief Engineer, Chandigarh v. Hari Om Sharma and Others** (1998 SCC (L&S) 1273) and has contended that Government as a model employer cannot take service from any person with the aforesaid stipulation i.e. without payment in the scale attached to the post. His case is that, since he had worked, he should have been paid salary for the post. He has also submitted that as his representation was replied in the year 1999 and thereafter he made further representations, thus there cannot be any question of limitation.

5. On going through the averments made in the RA, as also the averments made in the OA, and in the reply, we find that the respondents had taken the point that since the applicant was engaged as Gujarati Teacher in the year 1981 on his own option that he would not claim any salary for the post, the Issue cannot be reopened after more than 20 years. It is also the case of the respondents that in 1999 the reply was given to the applicant in respect of his prayer for promotion as High School Head Master and not in respect of his pay and allowances from 1981. Obviously, the claim of the applicant is barred by limitation under Section 21 of the A.T. Act, as the cause of action arose to the applicant prior to 1-11-82. Moreover, there was no separate application for condonation of delay.

6. Accordingly, we find no error apparent on the face of the record or on the face of the order under review. The grounds stated in the RA do not come within the purview of Order