

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH: MUMBAI

ORIGINAL APPLICATION NO. 655/01

Date of Decision: 30.5.2005

Shri S.R. Vaghela Applicant
Shri G.S. Wadia Advocate for Applicant/s

Versus

Union of India & Ors. Respondents
Shri R.R. Shetty Advocate for Respondents 1 & 2
Miss D. Fernandez for R3

CORAM
HON'BLE SHRI ANAND KUMAR BHATT MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)

1. To be referred to the Report or not x
2. Whether it needs to be circulated to other Banches of the Tribunal? x
3. Library. ✓

(Signature)
(MUZAFFAR HUSAIN)
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH: :MUMBAI

ORIGINAL APPLICATION NO.655/01

THIS THE 30TH DAY OF MAY 2005

CORAM HON'BLE SHRI ANAND KUMAR BHATT MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)

S.R. Vaghela,
working as Head Master,
Government High School,
Bhimpore, Daman-396 210

... Applicant

By Advocate Shri G.S. Walia

Versus

1. The Administrator,
Administration of Daman
Diu Secretariat
Moti Daman-396 220.
2. Director of Education,
Head of Office,
Department of Education,
U.T. Of Daman & Diu.
3. L.S. Borate,
Principal, Government
High School, Phimpore,
Daman-396 201.

.. Respondents

↓ By Advocate Shri R.R. Shetty. for R1 & 2 ↓
R3 by Miss D. Fernandez. ↓

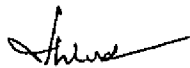
O R D E R

Hon'ble Shri Muzaffar Husain. Member (J)

The applicant in this OA is claiming promotion to the post of Principal / Assistant Direction Education in the Union Territory of Daman and Diu on the ground of reservation as a SC candidate.

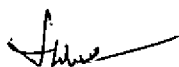


2. The material fact necessary for adjudication of the controversy involved in this case are briefly enumerated as follows. The applicant joined services under the respondents on 28.6.1972 under the Goa and Daman administration. In due course of time he was promoted as Headmaster on 09.3.1989. the next promotional post is Principal / Assistant Director Education in the pay Scale of Rs.10000-15200. The applicant was appointed as principal vide order dated 28.10.1992 on the recommendations of DPC for a period of six months, however, the period was extended from time to time and ultimately the services of the applicant as Principal was terminated on 30.12.1993 by order dated 18.10.1993. It is also stated that there are three post of Principal / Assistant Director available. Only one post out of three is occupied by SC candidate namely Shri B.S. Shrimali who was directly recruited through UPSC by the respondents. The other two posts are being occupied by general candidates, one of which is being occupied by Shri L.S. Borate on adhoc basis for a period of six months. It is further stated that according to recruitment rules 50% of the posts are to be filled up by promotion failing which by direct recruitment and rest 50% by direct recruitment. The respondents have not filled up any post by promotion by way of reservation. At least one post has to be reserved for SC candidate and



the applicant is the only SC candidate in feeder cadre of Headmaster and he fulfills all the qualification according to recruitment rules. The post that has been filled up by direct recruitment cannot be treated as filled up by promotion. The other post ought to have been filled up by SC candidate by observing roster point wherein the first post has to go to SC candidate. It is also stated that respondent No.3 has been promoted as Principal, Government High School, Phimpore, Daman with effect from 14.02.2002 during the pendency of this OA.

3. The respondents have resisted the claim of the applicant. In reply they have stated that earlier the applicant had approached this Tribunal for very same promotion to the post of Assistant Director / Principal Higher Secondary School under the Union Territory of Daman by way of OA 979/93, which was rejected by this Tribunal vide judgment and order dated 06th July, 1999. the very issue has been agitated by the applicant in his earlier OA 979/93, therefore, this OA is clearly barred by principles of resjudicata or most certainly by the principles of analogous to the principles of resjudicata. The applicant has already raised the said plea of being considered by way of either promotion or direct recruitment for the said post and the said plea has been rejected. The applicant cannot re-agitate the very same plea before this Tribunal. It is

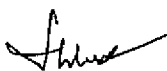


further stated that the cadre of Principal / Assistant Director of education consists of only three posts and that one Shri B.S. Shrimali has already been appointed by direct recruitment to the said post by UPSC as an SC candidate. Although the said post is to be filled up 50% by direct recruitment and 50% by promotion, the question of considering one more SC candidate for promotion to the said post whereby the reservation in the said post would go upto 66.66%, does not arise. There is no question of giving reservation to SC to the extent of more than 50% in the cadre of Assistant Director / Principal. Even if roster is to be operated, the question of giving the first post to SC candidate would not arise as only the 7th post in this cadre will go to an SC candidate.

4. The applicant has filed rejoinder and the respondents have also filed reply to the rejoinder.

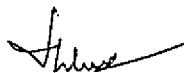
5. We have heard learned counsel for the parties and perused the material placed on record.

6. Learned counsel for the applicant contended that according to recruitment rules 50% posts are to be filled up by promotion, failing which by direct recruitment and rest 50% by direct recruitment. There are three posts of Principal / Assistant Director of Education in the Union Territory of Daman and Diu. One post out of three posts is occupied by SC candidate namely Shri B.S. Shrimali who was



directly recruited through UPSC by respondents. The second is occupied by Shri B.R. Solanki and the third by Shri L.S. Borate, both of them are general candidates. According to learned counsel for applicant, the post filled up by direct recruitment by SC candidate cannot be treated as filled by promotion. Learned counsel for applicant has invited our attention to the model roster reservation of 15% for SC candidates and 7 ½% for ST candidates issued by Government of India OM dated 29th July, 1979 (Exhibit-G) and argued that the post ought to have been filled up by SC candidate by observing roster point, according to which the first post has to go to SC candidate. He has further argued that two posts were transferred from Goa administration in May 1987, 50% the two posts ought to have been filled up by promotion, which was not done.

7. Learned counsel for the the respondents on the other hand contended that the question of being considered for promotion or by direct recruitment to the post of Principal of Higher secondary School has already been agitated by the applicant by way of filing OA 979/93 which was decided by this Tribunal on 06th July, 1999 and rejected the case of the applicant, hence this OA is barred by principles of resjudicata. He has further contended that the promotion to the post are to be carried out as per the new roster. According to new roster all three posts are to be filled by

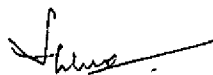


general candidates. One post is already filled up by SC candidate direct recruits. The reservation quota is already full and in the cadre of three post of Assistant Director reserving one more post for SC category would amount to increasing the reservation of SC up to 66.66%, which is not permissible.

8. We have given careful consideration to the rival contentions raised by learned counsel for the parties. We have also perused the judgment and order passed by this Tribunal in OA 979/93 decided on 06.7.1999, appended as Exhibit R1 by the respondents. In para 3 and 4 of the judgment of this Tribunal it reads as under

3. "The main contention put forth on behalf of the applicant is that there was no basis for keeping the post of Principal or direct recruitment, that when the applicant was appointed as Principal on adhoc basis he was eligible for promotion to that post and that post should not be filled by direct recruitment, that at any rate the applicant being a scheduled caste candidate and he being available for promotion in the department, the post of Principal should have been set apart for promotion and the action of the respondents in trying to fill up that post by direct recruitment is unconstitutional.

4. At the outset we would like to point out that even before the applicant was appointed to the post of Principal on adhoc basis, he had been made known that this post was meant for direct recruitment and vide Annexure A6 he was informed that it was only the post of Assistant Director which had to be filled up by promotion. The recruitment rules prescribe common qualification and method of recruitment for the five posts. The five posts are to be filled up 50% by promotion and 50% by



direct recruitment. When the Union Territory of Daman & Diu separated from Goa, as only two posts came to this Territory, one of them had to be kept for promotion and other had to be kept for direct recruitment. There was no special reason to keep any particular post for promotion. If the department has chosen to keep the post of Principal for direct recruitment and other post for promotion, it cannot be said that that decision is arbitrary or that they should have decided the other way. The applicant has accepted the adhoc promotion as Principal after knowing fully well that it is only for a temporary period. When applications were called for by the UPSC for direct recruitment to fill up that post the applicant has also submitted his application. His application could not be entertained as he did not have the eligibility criteria, as he did not possess the Master's Degree 2nd class. Having not been able to succeed in his attempt to get the post by direct recruitment, he cannot now again turn round and contend that that post cannot be filled by direct recruitment. XXXXXXXX"

A perusal of the judgment of this Tribunal in this case indicates that the same applicant earlier approached this Tribunal for filling the post of Principal by way of reservation either by way of promotion or by way of direct recruitment. The applicant in fact agitated his grievance for promotion under SC quota to the post of Principal, but his claim was rejected. Thus, it appears the question of promotion to the post of Principal or Assistant Director has already been agitated by the applicant and the Tribunal after considering the contention of the applicant that he was eligible for promotion to the post and that post could not be filled up direct recruitment as the applicant being



SC candidate, he was available for promotion, the claim of the applicant was rejected. Therefore, the claim of the applicant in this OA is barred by principle of resjudicata as well as constructive resjudicata.

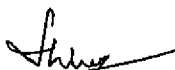
9. It is an undisputed position that one Shri B.s. Shrimali was directly recruited through UPSC. It is also a matter of record that Shri B.^L Solanki was promoted under the new recruitment rules dated 18.01.1995 and Shri L.S. Borate was promoted by order dated 16.02.2002 (Exhibit R6). The contention of the applicant is that the direct recruitment by SC cannot be treated as filled by promotion and one post ought to have been filled by SC candidate by promotion as per roster point. Learned counsel for the respondents invited our attention to the model roster for promotion for cadre strength up to 13 posts and argued that this model roster is appendix to the Annexure-3 to the new recruitment rules dated 18.01.1995. The model roster is reproduced below -

	<u>Ini</u>	1 st	2 nd	3 rd	4 th	5 th	6 th	7 th	8 th	9 th	10 th	11 th	12 th	13 th
	<u>tial</u>													
1.	UR	UR	UR	UR	UR	UR	SC	UR	UR	UR	UR	UR	UR	ST
2.	UR	UR	UR	UR	UR	SC	UR	UR	UR	UR	UR	UR	UR	ST
3.	UR	UR	UR	UR	<u>SC</u>	UR	UR	UR	UR	UR	UR	UR	UR	ST

Note: For cadres of 2 to 13 posts, the roster is to be read from entry 1 under column Cadre Strength till the last post and then horizontally till the last entry in the horizontal row, i.e. Like "L".

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A perusal of the above model roster makes it clear that



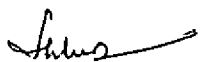
only 4th vacancy can be filled up by SC candidate. Since one post has already been occupied by Shri B.S. Shrimali, may be direct recruit, Sc candidate, the rest two posts would go to general candidates. If the third post is also filled by Sc candidate, it would amount to increasing the reservation up to 66.66% in the cadre of Principal / Assistant Director Education. Therefore, according to the new 40 point roster prepared after the judgment in case of R.K. Sabharwal Vs. State of Punjab 1995 SCC (L&S) 548 applicant cannot seek promotion to the said post on the basis of being Sc candidate. More over, the applicant is junior in the list at serial no.11, whereas the two general candidates namely B.R. Solanki is at serial number 1 and shri L.S. Borate is at serial number 3. In case of B.s. Gaur Vs. Union of India & Others 2002 SCC (L&S) 267 it has been held by the apex Court " There is no dispute that there are only three posts and one of the three posts is occupied by a general candidate and the second by a member of the Scheduled Castes and, therefore, the third post could not be allowed to go to a reserved candidate." In view of the above the applicant cannot seek promotion to the said post on the basis of being SC candidate.

10. To sum up, the applicant has failed to get one post by way of either direct recruitment or promotion and his claim was rejected in OA 979/93 by this Tribunal vide order



dated 06.7.1999. So far as the remaining two posts are concerned, according to recruitment rules of 1995 he could get only 4th vacancy. The general candidate already promoted stands senior to him in the seniority list of Headmaster. By granting promotion to the applicant, reservation will exceed the 66.66%, which is not permissible under the rules and more 50% reservation cannot be granted as per settled legal position by the Apex court.

11. For the reasons stated above, the applicant has failed to make out any case for judicial interference on any legal and valid grounds. The OA being devoid of merit, fails and accordingly it is dismissed. No order as to costs.



(MUZAFFAR HUSAIN)
MEMBER (J)



(ANAND KUMAR BHATT)
MEMBER (A)

Gajan.