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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.NO. 366/90

DATE OF DECISION: 2.2.1995

Mohanlal Hirachand

..Applicant

Mr. S.R. Atre

Counsel for applicant

V/s

Union of India & Ors.

..Respondents

Counsel for respondents

Coram:

The Hon'ble Shri Justice M.S.Deshpande, Vice
Chairman

The Hon'ble Shri P.P. Srivastava, Member(A)

1. To be referred to the Reporter or not? —
2. Whether it needs to be circulated to other
Benches of the Tribunal ? *no*


Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

O.A.NO. 366/90

Mohanlal Hirachand

...Applicant

V/s

Union of India & 3 Ors.

..Respondents

Corma: Hon.Shri Justice M.S.Deshpande, V.C.
Hon.Shri P.P.Srivastava, Member(A)

Appearance:

Mr.S.R.Atre
Counsel for the applicant

ORAL JUDGMENT: DATED: 2.2.1995
(Per: M.S.Deshpande, Vice Chairman)


By this application the applicant challenges the order dated March 28, 1990 reverting him from the post of Malaria Inspector to the post of Lower Division Clerk (I.D.C.).

2. The applicant was appointed as Peon in 1966 and was promoted as Deiver in 1974. On August 1, 1979, he was appointed as I.D.C.-cum-Store-keeper. After the establishment of State of Goa in 1987 the applicant made a representation to the Diu and Daman Administration on June 23, 1987 contending that he may be appointed to the post of Steward which post was held by one Mr. Naik who had opted for being allotted to the State of Goa. An interview was held on February 18, 1988 and the applicant came to be appointed as Malaria Inspector by the order dated February 19, 1988 on temporary basis. The applicant joined on 22nd February 1988. Under the Recruitment Rules for Direct Recruits the maximum age for appointment is 30 years and the educational qualifications prescribed^{are} that he must have passed

Matriculation or equivalent examination with Science as a subject. The applicant came to be reverted as he did not have the necessary qualification by the order dated March 28, 1990 and this reversion is being challenged by the applicant.


3. The respondents by the written statement contended that the post of Malaria Inspector was filled in by direct recruitment and under the rules governing that appointment it was necessary that for direct recruits, which is the only mode of appointment, the applicant should be below 30 years and should have passed Matriculation or equivalent examination with science as a subject. After the appointment of the applicant there was ^a hue and cry in the public and so the order of reversion came to be passed on March 28, 1990.

4. When the matter was called out there was no appearance for the respondents and only Shri Atare, Id. Counsel for the applicant was heard. The applicant has filed additional rejoinder in which he has stated that he had passed S.S.C. with physiology and hygiene as a subject and that subject appears under the heading Science, and he had passed in that subject (Annexure A-8 to the rejoinder). There is nothing to show that Science would be only physics or chemistry and not physiology and hygiene. What is more, the applicant had passed in general science also.



Going by the Secondary School Examination Certificate and the requirement of the Rules, the appointment of the applicant could not have been faulted on the ground that he did not have the requisite educational qualifications.

5. With regard to the age bar, the Id. Counsel for the applicant urged that the fact that the applicant was about 42 years old at the time of his appointment was a matter known to the respondents because he had been employed all along with the respondents and Shri Jani, who has filed the affidavit in reply, was also a member of the Departmental Selection Committee which selected the applicant. He urged that there were ^a few others whose names have been mentioned in the rejoinder who were appointed in other departments despite their being overaged viz., Sushila Premji aged 35 years, Ujamben Mathurudas, aged 35 years, Chanduben lalgi aged 35 years, who were appointed as Field Worker, Peon and Bal Sevika respectively despite the age limit of 30 years. We are not impressed by this submission because if there could be no relaxation of the age bar while appointing the applicant, the applicant's appointment would not have been ^{regular} ~~valid~~. Our attention was drawn to the observations of the Supreme Court in MR. BHAGWATI PRASAD Vs. DELHI STATE MINERAL DEVELOPEMTN CORPORATION, AIR 1990 SC 371, to the effect that practical experience would always aid the person to effectively discharge the duties and is a sure



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guide to assess the suitability. The direction given by the Supreme Court was to pay equal pay at par with the persons appointed on regular basis to the similar posts or discharge similar duties as there was no mention of any rules which did not permit relaxation. In the absence of rules the experience criteria was to be applied. The observations in this case would not, therefore, lend any assistance to the applicant.

6. The next objection was that the applicant could not have been reverted when he was appointed by direct recruitment to a lower post and reliance was placed on HUSSAIN SASANSAHED KALADGI Vs. STATE OF MAHARASHTRA, AIR 1987 SC 1627 and NYADAR SINGH Vs. UNION OF INDIA & ORS., AIR 1988 SC 1979. Those were not the cases of the persons who held lower posts in the Government prior to the direct recruitment. If the appointment of the applicant was found to be ^{irregular} ~~invalid~~ or contrary to the rules, we see no vice in the reversion of the applicant to a post which he would have continued to hold but for his appointment under the guise of direct recruitment to another post.

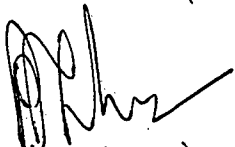
7. The position, however, is a little different in the present case because before the reversion order was issued to him on 28.3.1990 no notice to show cause was given to him and rules of natural justice were not observed before


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reaching the conclusion that the applicant's appointment did not conform to the rules. The applicant had worked for more than two years as Maleria Inspector and an opportunity should have been given to him to show cause before making the order of reversion against him. This basic requirement was not fulfilled in the present case and we do not think that the order of reversion can be supported.

8. We would have normally permitted the respondents to give such an opportunity to the applicant and then pass an order on the basis of the facts, but since the applicant had been in Government service all along and instances have been cited of three persons who were not reverted inspite of age limit that was prescribed and that the applicant himself has worked for more than two years in the post of Maleria Inspector, we do not think that we should now permit the respondents to hold such an enquiry nearly five years after the order of reversion was passed.

9. In the result we quash the order of reversion pass on 28.3.1990. Since the applicant was ~~permitted to continue as Maleria~~ ^{Inspector} by an interim relief of this Tribunal we do not make any other direction. There would be no order as to costs.


(P.P. Srivastava)
Member(A)


(M.S. Deshpande)
Vice Chairman