

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 700/91

Transfer Application No.

Date of Decision 10/11/95

Bhagwandas Dahyabai Patel

Petitioner/s

Shri D.V. Gangal

Advocate for
the Petitioners

Versus

Union of India and others

Respondent/s

Shri V.S. Masurkar

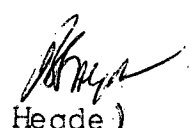
Advocate for
the Respondents

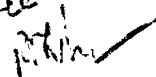
CORAM :

Hon'ble Shri. B.S. Hegde, Member (J)

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 ?


(B.S. Hegde)
Member (J)

I agree


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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 700/91

Bhagwandas Dahyabai Patel

... Applicant.

V/s.

Union of India through
The Chief Secretary
Administration of Union
Territory of Daman & Diu
Secretariat, Fort Area
Moti Daman.

The Executive Engineer
Divisional Office
Electricity Department
Daman & Diu
Nani Daman.

The Collector,
Secretary
Power Department
Moti Daman.

... Respondents.

CORM: Hon'ble Shri B.S. Hegde, Member (J)

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

Appearance:

Shri D.V. Gangal, counsel
for the applicant.

Shri V.S. Masurkar, counsel
for the respondents.

JUDGEMENT

Dated: 10/11/95

¶ Per Shri B.S. Hegde, Member (J) ¶

Applicant was appointed as L.D.C.
on 7.8.81 and the seniority list shows Serial No.56
in L.D.C. cadre. As per the recruitment Rules for the
post of U.D.C. , L.D.Cs with 3 years regular service
in the cadre are eligible for promotion which post
is to be filled in by selection. The main contention
of the applicant is that he was eligible to be
considered for the post of U.D.C. in the year 1994
on the basis of D.P.C. held in the year 1990. The
respondents have appointed his juniors, Shri
K.L. Halpati who is at serial No. 57 and Shri H.L. Halpati
at serial No. 59. They were promoted to the post

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of U.D.C. on 22.6.90. Though the applicant made representation as required under Section 20 of the Administrative Tribunals Act reply has not been received from the respondents. Hence he filed this O.A. seeking for the following reliefs.

1. to direct the respondents to constitute a Review DPC to consider the case of the applicant and if found fit to promote him from the date his juniors have been promoted with all consequential benefits.
2. Hold and declare that the proceedings of D.P.C. held in or about January, February 1991 considering the case of the applicant among others for promotion to the post of U.D.C. as illegal.

2. Respondents in their reply contended that the prayer made by the applicant is vague in which he sought for a review DPC. It is not clear that which DPC he is challenging. Applicant states that the D.P.C. met on 5.5.90 and selected 19 candidates out of 51 candidates who were eligible to be considered. Thereafter, the D.P.C. met in the year 1992. There was no D.P.C. in the year 1991, so the prayer made by the applicant has no relevance to the issue raised in the O.A.

3. The second contention of the respondents is that the applicant is not even made the so called juniors as party respondents. It is not the contention of the applicant that he has not been considered by the D.P.C. in 1990. Though he was considered he was not come up to the expectation for the purpose of the

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promotion vis-a-vis his other colleges in the other cadre. As a matter of fact he was promoted in the year 1992. During the course of hearing, the respondents showed us the DPC proceedings, out of which 6 have been reserved for SC/ST candidates. The DPC recommended for promotion all the candidates having "outstanding" and "Very Good" only. The performance of the applicant is only average. Therefore, he has not been selected. However, the learned counsel for the respondents contended that the successful candidates selected by the DPC was within the knowledge of the applicant as it was placed on the notice board immediately after pronouncement of the result. Since he was not made any representation against the DPC recommendation, the petition filed by the applicant is a belated one and is barred by time.

4. The learned counsel for the applicant vehemently urged that keeping in view the contents of the O.M. dated 5.9.83 with reference to the order passed by the respondents on 22.6.90, the applicant ought to have been promoted to the post of UDC on the basis of O.M. dated 5.9.83 reads as below:

" In partial modification of the existing instructions for filling up various posts the Government is pleased to decide that whenever there is an absolute need for filling up, posts on ad-hoc basis by promotion, the DPC should select the eligible candidates on the basis of Seniority-cum-fitness. In other words the DPC should draw up the panel of selection strictly on the basis of seniority, subject to the rejection of unfit, irrespective of the fact whether the post is classified as 'selection' or non-selection post. These instructions only apply to filling posts on ad-hoc basis."

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5. The learned counsel for the applicant also contended that applicant's Juniors have been promoted to the post of UDC by the order dated 22.6.90. However, during the course of hearing the learned counsel for the applicant urged that he is not asking for reversion of his juniors.

6. We have heard counsel for the parties and perused the records. The only point to be considered is that whether the recommendation made by the DPC for promotion to the post of UDC is on ad-hoc basis or on regular basis. On perusal of DPC proceedings we do not find that the selection made by the DPC is on ad-hoc basis, thereby it cannot be said that the selection is made by the DPC is for any ad-hoc appointment. If the respondents are required to make ad-hoc promotion in the exigency of service, and if no panel exists, in that event, the guidelines referred to in the circular dated 5.9.83 is to be applied for taking decision suitably. In case a duly selected panel is available, considering the exigency of service, there is no illegality in promoting from the panel on ad-hoc appointment also besides promoting them on regular basis. In the instant case, the prayer made by the applicant is rather vague, he did not question the recommendations made by the DPC. Admittedly, the post of UDC has to be made by selection on the recommendation of the DPC record we find that the DPC selected the persons on the basis of comparative assessment and it cannot be treated only for the purpose of ad-hoc basis. Since the panel names are already available, as such, there is nothing wrong in the selected panel names for filling up the vacancies. We do not find any

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infirmity in the order passed by the respondents.

7. In the result considering the rival contentions of the parties, we see no merit in the application. Accordingly the O.A. is dismissed with no order as to costs.



(P.P. Srivastava)
Member (A)



(B.S. Hegde)
Member (J)

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