

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1338 OF 1992.

DATE OF DECISION : 18-9-98

P. L. Patel & Another.

Petitioner.

Shri M.S. Ramamurthy alongwith

Shri I. J. Naik,

Advocate for the
Second Petitioner.

VERSUS

Union Of India & Others

Respondents.

Shri V. S. Masurkar.

Advocate for the
Respondents.

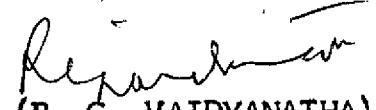
CORAM :

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other ^W
Benches of the Tribunal ?


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1338 OF 1992.

Dated the 18th day of September, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

1. P. L. Patel,
Superintendent (Gazetted),
"Pitru Smriti",
Angelica Road,
P.O. - MOTI DAMAN. ... Applicants

2. G. D. Phadte,
Daman.

(By Advocate Shri M.S. Ramamurthy
alongwith Shri I. J. Naik) for the
second applicant).

VERSUS

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,
Administrator's Secretariat,
P.O. - MOTI DAMAN

(By Advocate Shri V. S. Masurkar).

... Respondents.

ORDER

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

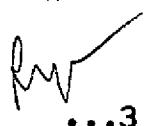
This is an application filed under Section 19
of the Administrative Tribunals Act. Respondents have filed
reply. We have heard the Learned Counsels appearing on
both sides. 

2. Originally the application was filed only by the first applicant, P. L. Patel. Subsequently, the second applicant, G. D. Phadte, has been impleaded on his own request as per M.P. No. 958/93 which came to be allowed vide Tribunal's Order dated 20.12.1993. The first applicant's case is that, he is entitled to get promotion to the post of Grade-II (Gazetted). During the pendency of the application, the first applicant got his promotion and, therefore, the original application does not survive so far as the first applicant is concerned (vide order dated 12.02.1997).

Now the application is pending so far as the claim of the second applicant is concerned.

Though the second applicant has come on record, there is no amendment to the application so far as his claim for promotion is concerned. All the allegations in the O.A. are in respect of the claim of first applicant, P. L. Patel. The second applicant's case is made out in M.P. No. 958/93 but there is no consequential amendment to the original application. Therefore, to understand the case of the second applicant, we will have to consider the original application alongwith allegations in MP. No. 958/93.

3. The case of the second applicant is that the administration has not considered him for promotion to the post of Group II or Group 'B' (Gazetted). He feels that his case is identical to that of the


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first applicant, P. L. Patel. The second applicant has stated in the M.P. that he is entitled to notional promotion either from 1988 or 1989 or atleast from 1990.

^{Second}
The ~~first~~ applicant was earlier working as a Head Clerk and promoted as Civil Registrar-cum-Sub-Registrar in August 1993. He is subsequently promoted as Superintendent (Gazetted) in September, 1992. He is now entitled to promotion as Group II/Group 'B' (Gazetted). Since the administration has not granted him promotion, he has got himself impleaded in the present application. He, therefore, wants a direction to the respondents to promote him to Group II/Group 'B' (Gazetted) retrospectively from 1988 or 1989 or from December 1992, as has been given to the first applicant, P. L. Patel.

4. The respondents' contention is that the second applicant came to be promoted as a Gazetted Superintendent on 04.09.1992. That the applicant was earlier working as Civil Registrar-cum-Sub-Registrar, which is not a feeder cadre for promotion to the post of Group II/Group 'B'. The applicant's previous post of Civil Registrar was not equivalent and not identical with the post of Non-Gazetted Superintendent. It is stated that these two posts had different recruitment rules and nature of duties were different. That there was no channel for promotion to the post of Civil Registrar after Goa was delinked from the composite Union Territory of Goa, Daman & Diu. The applicant was making representations and on that basis, the post of Civil Registrar was recently included in the feeder cadre for promotion to the next higher post of Gazetted Superintendent. It is only in 1993 for the

first time that the Civil Registrar-cum-Sub Registrar's were brought under one cadre as equivalent post. On the basis of service as a Civil Registrar, which was not a feeder cadre, the second applicant cannot claim promotion to the post of Group II/Group 'B' (Gazetted).

5. Though the pleadings are lengthy and the record is bulky with number of documents, the point involved is very short.

As we could understand ^{from} the arguments of both the sides, the short point for determination boils down to the question, namely - whether the second applicant while holding the post of Civil Registrar, was entitled to promotion to the post of Group II/ Grade 'B' (Gazetted) or he is entitled to claim his promotion only after he completed three years after promotion to the post of Gazetted Superintendent in 1992?

6. It is not and cannot be disputed that for the post of Group II/Group 'B' (Gazetted), the feeder cadre was Gazetted Superintendent/non-Gazetted Superintendent. But admittedly, the second applicant never worked as a Non-Gazetted Superintendent. He was working as a Civil Registrar-cum-Sub Registrar (for short C.R.S.R.) from 1983 to 1992, when he got promotion as Gazetted Superintendent. Now, as a Gazetted Superintendent, he could be considered for promotion to the post of Group II after he completes three years in the feeder cadre. Since the second



applicant was promoted on 10.09.1992 as Gazetted Superintendent, he is entitled to be considered for promotion to Group II after the expiry of three years from 10.09.1992.

7. But the applicant's case is that, his original post of C.R.S.R. should be treated as equivalent to non-gazetted Superintendent and on that basis, his post was in the feeder cadre for Group-II post. It is also not disputed that for the first time in 1992 draft rules were framed and in 1993, the new rules came into force, which brought Non-Gazetted Superintendent and C.R.S.R. as one cadre or equivalent cadre. But prior to 1993, admittedly, there ^{were} ~~was~~ no rules to show that C.R.S.R. was equivalent to Non-Gazetted Superintendent.

8. It may be that the pay scale of C.R.S.R. and Superintendent (non-gazetted) was one and the same. There may be many posts in many departments having same pay scale but they cannot be treated as one cadre for the purpose of promotion to some other cadre. The respondents have produced separate recruitment rules for C.R.S.R. and separate recruitment rules for Superintendent (non-gazetted). It is only for the first time in 1993 under the new rules these two cadres were shown as equivalent cadres.

The Learned Counsel for the applicant placed strong reliance on a transfer order of one Shri A. E. Fadra, by order dated 09.10.1992 when he was transferred from the post of Superintendent in the Collectorate, Daman to the post of C.R.S.R., Daman.

The respondents have stated in their reply that by some error that transfer order was issued. Merely by this solicitory transfer order it is very difficult to say that C.R.S.R. and Non-Gazetted Superintendent were equivalent cadre in all respects to bring them as in common feeder cadre to the promotional Group-II Gazetted. There may be a possibility of either the order of transfer is an error, as alleged by the respondents or it might be possible, one officer in one department being transferred to some other ex-cadre post. Transferring of departmental officers to ex-cadre post is not unknown in Government service. Hence, merely by virtue of one order of transfer we cannot lead to a positive conclusion that the two cadres were one and the same for all purpose.

In our view, the 1977 Rules on which reliance was placed, is about a general provision and there is no bearing on the particular cadres with which we are now concerned, namely - the C.R.S.R. to the post of Non-Gazetted Superintendent.

9. Then we have some intrinsic material on record to show that the two cadres could not have been one and the same for all purposes. Infact, the applicant's counsel himself relied on the meeting of D.P.C. held on 26.08.1992 in which the second applicant was recommended to be promoted to the post of Superintendent (Gazetted). In the minutes, the Committee has referred to the rule that for the post of Superintendent (Gazetted), the feeder cadre is -

- (i) Non-Gazetted Superintendent with two years regular service,
- (ii) Civil Registrar-cum-Sub Registrar with three years service,
- (iii) Assistants/Head Clerks with five years service.

Infact, the applicant's counsel wanted to rely on this to show that the C.R.S.R. is considered equivalent to non-gazetted superintendent for the purpose of promotion to the post of Superintendent (Gazetted). In our view, this document does not support the case of the second applicant. The three feeder cadre mentioned are not equivalent to each other. For instance, item no. 3 is also made a feeder cadre but is admittedly a lower cadre. Item no. 3 refers to Head Clerks which is lower than C.R.S.R. Infact, the second applicant was earlier working as a Head Clerk and came to be promoted as C.R.S.R. in 1983. Therefore, merely because Head Clerk is also shown as a feeder cadre, it cannot be said that the post of Head Clerk is equivalent to C.R.S.R. and equivalent to ~~Non-Gazetted~~ Non-Gazetted Superintendent.

The criteria shows that for a Superintendent, two years service is sufficient, for C.R.S.R. - 3 years service is required and for Head Clerks - five years service is required for being considered for the ~~next~~ promotion, i.e. Superintendent (Gazetted). Though three categories are shown as feeder cadre, they are not equivalent to each other, but three separate/different sources are shown, from which an officer can be promoted

to Superintendent (Gazetted). If by chance, this rule had shown the feeder cadre as either non-gazetted Superintendent of two years service or C.R.S.R. of two years service, then the matter would have been different. But here, the rule making authority has provided - two years service as minimum required for Superintendent (non-gazetted) and three years service for C.R.S.R. and 5 years service for Head Clerks, and this clearly shows that they are different cadres and not equivalent cadre.

10. The Learned Counsel also invited our attention to an un-reported judgement of a Division Bench of this Tribunal dated 25.01.1995 in O.A. No. 1350/92 pertaining to promotion of two Mamlatdars to the post of Assistant Secretary. We have perused that judgement. The point under consideration, namely - whether C.R.S.R. and Superintendent (non-gazetted) belong to one and the same cadre or equivalent in all respects, was neither raised nor decided in that case. There the question was, whether the promotion on adhoc basis should be ~~on~~ a selection method or a non-selection method ? It was observed that for purpose of promotion ~~on~~ adhoc basis, non-selection method should be applied. This decision has no bearing on the point under consideration.

11. As already stated, no rules are brought to our notice to show that non-gazetted superintendent and C.R.S.R. were treated alike in every respect to form a common cadre for the purpose of promotion to the post of Gazetted Group II/Group 'B'. But they were


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brought under common cadre for this purpose only in 1993. But the second applicant is asking retrospective promotion either from 1988 or 1989 or atleast from 1990. At that time, there was no such rule like the present rule of 1993.

The contention of the second applicant in the pleadings and also submissions by the Learned Counsel Mr. M.S.Ramamurthy is that the case of the second applicant is identical to the case of first applicant in all respects and, therefore, the second applicant should get promotion from December, 1992 when the first applicant got that promotion. We have already stated that the second applicant has not amended the O.A. to plead his case. He has simply adopted the case of the first applicant. The applicant is claiming service as a non-gazetted superintendent. The second applicant is claiming as a C.R.S.R. Therefore, the second applicant's case cannot be identical to the case of first applicant unless we are convinced by rules and documents that the cadre of non-gazetted Superintendent and the cadre of C.R.S.R. are identical in all respects. Infact, the second applicant, as a C.R.S.R. had no avenue of promotion at all, but the 1993 Rules brought him on par with gazetted and non-gazetted Superintendent and now he has a right to get promotion to Group 'B' /Group-II post. In the meanwhile, the second applicant got promotion as a Gazetted Superintendent on 10.09.1992. Now he is in the feeder cadre for promotion to Group-II/ Group 'B', provided he has three years service as Non-Gazetted Superintendent or Gazetted Superintendent. We have already found that he has failed to make out a case of C.R.S.R. being equivalent to non-gazetted Superintendent. Therefore, on the basis of previous

service as C.R.S.R., the second applicant cannot claim promotion to the post of Group-II/Group 'B'. But after having got promotion as Gazetted Superintendent, he has every right to make a claim for promotion to the next grade after completing three years in that post. Since he got this promotion on 10.09.1992, he will become eligible for being considered for promotion of Group-II on or after 10.09.1995. Since during the pendency of the application the second applicant had acquired the eligibility after 10.09.1995, we think a direction should be given to the respondents to consider the case of the second applicant for promotion. There is also dispute regarding the seniority position of the second applicant. Though he is shown in a higher place in the seniority list, it must be read alongwith the entries in column no. 4. For example, in the seniority list at page 203 of affidavit-in-rejoinder, we have one seniority list dated 31.10.1994. The second applicant's name finds a place at sl. no. 6. But in column no. 4 his date of appointment in the present cadre as Superintendent (Gazetted) is shown as 10.09.1992. The first applicant, P. L. Patel, is shown at sl. no. 8 but his induction into the cadre of Superintendent (Gazetted) is shown as 09.06.1989. Similarly, sl. no. 9 and 10 are also shown having become Superintendent (Gazetted) in 1989. Then Sl. No. 11 has got this position on 04.09.1992. Therefore, though the second applicant's name is shown at sl. no. 6, taking the dates of appointment to the cadre in column no. 4, he would be junior to sl. no. 7 to 11. We do not know as to why

the second applicant's name is shown at sl. no. 6 instead of sl. no. 11. This clearly shows that there is some dispute regarding the position of the second applicant in the seniority list. Though the ~~officials~~ at Sl. Nos. 7, 9 to 11 are not parties to this case, the Learned Counsel for the respondents rightly contended that the right of second applicant's promotion cannot be decided in the absence of these officials shown in the seniority list who had been promoted to the cadre of Superintendent (Gazetted) much earlier than the second applicant. Therefore, the argument that the application is bad for non-joinder of necessary parties is not without substance. The Learned Counsel for the second applicant contended that respondents cannot be allowed to argue this point since they have not taken any plea in the written statement regarding non-joinder of necessary parties.

We find that in the first written statement filed by the respondents on 22.01.1993 they have clearly taken a plea that the application filed by P. L. Patel is bad for non-joinder of necessary parties. The second applicant has just come on record without making any additional pleadings in the O.A. Then the respondents filed additional reply. Since there was no change in the format of the O.A. after the second applicant came on record, whatever stated in the first written statement about non-joinder still remains. Then the respondents have filed additional written statement to meet the particular case of second applicant, namely that C.R.S.R. is equivalent to Non Gazetted Superintendent. Therefore, the plea in the first

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written statement about non-joinder of necessary parties holds good not only regarding the case of first applicant but also regarding the case of second applicant. However, since we have reached the conclusion that second applicant has become eligible for promotion during the pendency of the O.A. in view of the admitted and undisputed fact that he has completed three years in the feder cadre of Superintendent (Gazetted), we cannot throw away this application on the technical ground. However, we make it clear that while considering the case of the second applicant for promotion, since he has now acquired eligibility, it is open to the respondents to consider his case for promotion if there are vacancies and subject to the second applicant being senior enough for consideration for promotion. We are told that some of the persons mentioned in the seniority list have already been promoted and, therefore, there may not be any impediment to consider the case of the second applicant for promotion. However, our direction to the respondents to consider the case of the second applicant as per rules, necessarily includes the question of eligibility, zone of consideration, fitness, suitability and seniority.

In view of the above discussion, the second applicant is entitled to succeed partially.

12. In the result, the application is allowed partly. It is hereby declared that the second applicant, G. D. Phadte, has since become eligible for being considered for promotion to the post of Gazetted

Group-II/Group 'B' (Gazetted) having completed three years of service in the feeder cadre of Superintendent (Gazetted) (which he completed on 10.09.1995) and, therefore, he should be considered for promotion to the said post. We, therefore, direct the respondents to consider the case of the second applicant for promotion to the said post as per rules and subject to availability of vacancy, seniority, etc. and if he is found fit and suitable, he may be given promotion either on regular or on adhoc basis in the light of the observations made in this order. In the circumstances of the case, we direct the respondents to comply with this order within a period of three months from the date of receipt of this order (subject ofcourse, to the availability of vacancy). In the circumstances of the case, there will be no order as to costs.

D. S. Bawej
(D. S. BAWEJA)
MEMBER (A).

R. Vaidyanatha
18.9.98
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.