

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 979 OF 1993.

Date of Decision: July 06, 1999.

Samantbhai Rambhai Vaghela, Applicant.

Shri I. J. Naik, Advocate for Applicant.

Versus

Union Of India & Others, Respondent(s)

Shri R. R. Shetty for Shri R. K. Shetty, Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice S. Venkataraman, Vice-Chairman.

Hon'ble Shri. S. K. Ghosal, Member (A).

(1) To be referred to the Reporter or not? No
(2) Whether it needs to be circulated to other Benches of the Tribunal?


(S. VENKATARAMAN)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 979 OF 1993.

Dated this Tuesday, the 6th day of July, 1999.

CORAM : HON. SHRI JUSTICE S. VENKATARAMAN, VICE-CHAIRMAN.
HON. SHRI S. K. GHOSAL, MEMBER (A).

Samantbhai Rambhai Vaghela,
presently working as Principal,
Government Higher Secondary School,
Diu.

Residing at -

Government Quarters D/3,
Diu.

... Applicant

(By Advocate Shri I. J. Naik).

VERSUS

1. Union Of India through the Administrator, Administration of Daman & Diu Secretariate, Moti Daman - 396 220.
2. The Chairman, Union Public Service Commission, Dolpur House, New Delhi.
3. The Chief Secretary, Administration of Daman, Diu & Dadra & Nagar Haveli, Secretariate, Moti Daman, Pin Code - 396 220.
4. Shri Shrimali Babulal Shankarlal, Residing at Sector-7, CH-37/1, Gandhi Nagar - 382 017, Gujarat State. ... Respondents.

(By Advocate Shri R. R. Shetty for Shri R. K. Shetty).

ORDER (ORAL)

PER.: SHRI JUSTICE S. VENKATARAMAN, VICE-CHAIRMAN.

The applicant was promoted as High School Headmaster in 1990 on adhoc basis. As the post of Principal, Government Higher Secondary School, Diu and the post of

Assistant Director of Education had been lying vacant for a long time, the applicant gave a representation in 1989 and also in 1991 praying that he be promoted to any of the two posts. The applicant was informed by Annexure A-6 dated 24.01.1992 that the post of Principal in the Higher Secondary School, Diu, would be filled up by direct recruitment and that advertisement had been published in the newspapers regarding adhoc appointment and that if he fulfills the requirement, he may apply accordingly. He was also informed that the post of Assistant Director of Education is required to be filled by promotion from eligible candidates as per the recruitment rules. The applicant then gave another representation contending that the post of Principal and the post of Deputy Inspector of Schools, which is subsequently redesignated as Assistant Director of Education, could not have been clubbed together. Subsequently, the applicant was offered the post of Principal on adhoc basis for a period of six months. The applicant accepted that appointment on 28.10.1992 (Annexure A.12). The applicant's adhoc appointment was continued till it was filled up by a regular appointment through the U.P.S.C. as per Annexure A-13. In the meanwhile, the U.P.S.C. had issued an advertisement for direct recruitment to the post of Principal on 12.12.1992. The applicant applied for that post on 19.12.1992. His application however was not considered ^{as he was not} eligible for direct recruitment. Thereafter, the applicant has filed this present application for quashing the Annexure A-1 dated 02.09.1993 by which the fourth respondent has been offered the post of Principal on

his selection by direct recruitment and for a declaration that the post of Principal, Government Higher Secondary School, is required to be filled by promotion and that the applicant who belongs to S/C category deserves to be regularised in the post of Principal.

2. The respondents in their reply have contended that as per the recruitment rules, the post of Deputy Inspector of Schools, Principal, Teachers' Training College, Principal Higher Secondary School, Social Education Officer and Education Officer, were all required to be filled up 50% by promotion failing which by direct recruitment and 50% by direct recruitment, that when Goa became a State and Daman & Diu were separated, only two posts namely - Principal Higher Secondary School and Deputy Inspector of Schools, which was redesignated as Assistant Director of Education, came under the Union Territory of Daman & Diu, that out of these two posts the post of Principal was kept for direct recruitment while the post of Assistant Director of Education was kept for promotion, that the applicant who was promoted on adhoc basis as Headmaster in 1990 was regularised only on 10.06.1993, that as on ~~that~~ date he was appointed on adhoc basis as well as on the date when the U.P.S.C. called for applications for direct recruitment, the applicant was not at all eligible for promotion, as he had not completed five years of regular service in the post of Headmaster, that the applicant accepted the post of Principal on adhoc basis knowing fully well that it was to be filled up by direct recruitment and that he also applied for direct recruitment for that post and that ~~he~~ ^{his} claim that the post should be filled up by promotion and that he should be promoted to that post is untenable.

3. The main contention put forth on behalf of the applicant is that there was no basis for keeping the post of Principal for 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.

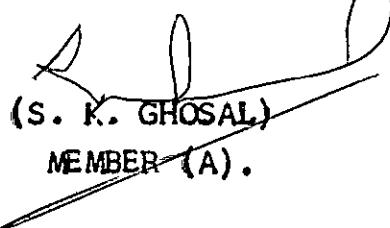
4. At the outset we would like to point out that even before the applicant was appointed to the post of Principal on adhoc basis, he had been made known that this post was meant for direct recruitment and vide Annexure A-6 he was informed that it was only the post of Assistant Director which had to be filled up by promotion. The recruitment rules prescribe common qualifications 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 got separated from Goa, as only two posts came to this Territory, one of them had to be kept for promotion and the 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 U.P.S.C. 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.

In Madan Lal & Ors. V/s. The State of Jammy & Kashmir & Others | JT 1995(2) SC 291 | the Apex Court has held that - "It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted." The Learned Counsel for the applicant sought to distinguish this decision by pointing out that in this case the applicant had not attended any interview. But the principle behind the decision is that if a candidate tries to secure appointment by participating in the selection process either by attending the interview or by submitting his application, he cannot subsequently turn round and challenge that selection process merely because he is not successful in the interview or because he is not called for the interview on the ground that he is ineligible. In the circumstances, we cannot allow the applicant to now contend that the post of Principal ought to have been filled up by promotion and not by direct recruitment. The applicant himself had no right to insist that a particular post should be filled up by promotion or that he should be considered for promotion to fill up that post.

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5. For the above reasons we do not find any merit in this application and it is accordingly dismissed. There will be no order as to costs.


(S. K. GHOSAL)

MEMBER (A).


(S. VENKATARAMAN)

VICE-CHAIRMAN.

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