

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1059/93

1.1.99
Date of Decision:

Rachhpal Singh

.. Applicant

Shri G.S.Walia

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurker for R.1& 2
Shri A.I.Bhatkar for R.3.

.. Advocate for
Respondent(s)

CORAM:

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

The Hon'ble Shri S.L.Jain, Member (J)

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

(2) Whether it needs to be circulated to +
other Benches of the Tribunal ?

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1059.93

Dated this the 14 day of Oct 1999.

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

Hon'ble Shri S.L.Jain, Member (J)

Rachhpal Singh,
Working as Craft Instructor
and Residing at Govt. Quarter
No.C-3/3, Fort Area,
Moti Daman 396 220

... Applicant

By Advocate Shri G.S.Walia

V/S.

1. Union of India through
Administrator,
Union Terriroty of Daman
and Diu, Dadra and Nagar
Haveli, Daman 396 220.

2. Chief Secretary,
Secretariat
Union Territory of Daman
and Diu, Dadra and Nagar
Haveli, Daman 396 220.

3. V.Keshavan,
Presently but illegally
working as Principal,
Industrial Training Inst.
Moti Daman 396 220.

... Respondents

By Advocates Shri V.S.Masurkar
for Respondents No. 1 & 2 and
Shri A.I.Bhatkar for Respon-
dent No. 3.

.. 2/-

O R D E R

{Per : Shri D.S.Baweja, Member (A) }

This application has been filed challenging the order dated 16.9.1993 by which the Respondent No. 3, Shri V.Keshavan is being allowed to work on deputation/absorption basis as Principal, Industrial Training Institute Daman in the Union Territory of Daman & Diu.

2. The case of the applicant briefly is as follows. The applicant is working as Craft Instructor in the scale of Rs.1400-2600 in the Industrial Training Institute, Daman. He was due for promotion as Group Instructor in the scale of Rs.2001-3200 but Respondent No.3 was illegally brought on deputation and finally absorbed as Group Instructor in violation of the recruitment rules as per order dated 12.7.1990. The applicant challenged the same through OA.No.218/1991. This OA. was allowed as per order dated 14.6.1993 and absorption of ^{No.3} respondent was held bad in law and accordingly quashed with further direction that the applicant would be considered for the post. However, as per order dated 16.9.1993 in utter violation of the recruitment rules and order of the Tribunal dated 14.6.1993, absorbed the Respondent No. 3 as Principal w.e.f. 4.9.1992 in supersession of the earlier orders of absorption of the Respondent No. 3 as Group Instructor. This order on the same date was superceded by another order making the appointment of the Respondent No.4 on deputation from 12.12.1988. Feeling aggrieved by this action of respondents, the applicant has challenged the appointment of the Respondent No. 3 as Principal through this OA. filed on 6.10.1993.

3. The applicant's main defence is that the post of Principal is to be filled up ~~only~~ by promotion from the feeder cadre of Group Instructor/ ~~Surveyor~~ and therefore the appointment of Respondent No. 3 on deputation/absorption is in violation of the recruitment rules.

4. The official Respondents No. 1 & 2 in the written statement have opposed the application. It is submitted that the Respondent No. 3 is treated on deputation on the post of Principal from 12.12.1988 and from 4.9.1992 he has been absorbed on the same post. The respondents submit that since no employee eligible for the post was available in the feeder cadre, the Respondent No. 3 was brought on deputation as an administrative exigency being an employee of the erstwhile Union Territory of Goa, Daman & Diu. Thereafter, he has been absorbed on the same post. In terms of the direction in the order dated 14.6.1993 in OA.No. 218/1991, the applicant could not be promoted as Group Instructor as he was not the senior most Craft Instructor. The respondents contend that applicant has no cause to challenge the appointment of Respondent No. 3 as he is not entitled for promotion as Principal at the present as he is working only as a Craft Instructor. With this background, the respondents plead that the applicant is not entitled for any relief and OA. deserves to be dismissed.

5. The private Respondent No. 3 has filed separate Written Statement. While supporting the averments of the Respondents No. 1 & 2, the respondent No. 3 has contended that applicant has no locus standi at all in challenging his appointment as the applicant is not aggrieved in any way. It is further stated that applicant is still working as Craft Instructor only and he also does not possess the prescribed qualification for the post of Principal. The Respondent No. 3 therefore submits that the present OA. is only a public interest litigation and the Tribunal ~~therefore~~ cannot entertain such an OA. and the same Ldeserves to be dismissed.

6. The applicant has not filed any rejoinder reply for both the written statements.

7. Both the counsel for the official respondents as well as private Respondent No. 3 vehemently argued that the applicant is no way aggrieved by the impugned order appointing Respondent No. 3 as Principal and the present OA. is only a public interest litigation and therefore not maintainable before the Tribunal. We will therefore deliberate on this issue first before going into the merits of the relief prayed for. The respondents have contended that the applicant at the present is working only as a ~~not~~ ^{also} Craft Instructor and is Lnot senior most even for promotion to the ~~not~~ ^{also} next post of Chief Instructor. It is Lstated by the respondents

that as per the recruitment rules, only Group Instructor with 3 years regular service is eligible for promotion as Principal. The Respondent No. 3 has also alleged that the applicant at the present does not possess the required technical qualification as per the recruitment rules and therefore even if the applicant is promoted as Group Instructor cannot be considered for promotion to the post of Principal after completion of 3 years of regular service as per the Recruitment Rules. The learned counsel for the applicant, on the other hand, vehemently contested the arguments of the official respondents and private respondent No.3 stating that the applicant is aggrieved by the absorption of Respondent No. 3 on the post of Principal. The learned counsel for the applicant amplified further that as per the recruitment rules, the post of Principal is to be filled up by promotion from the feeder cadre of Group Instructor and ~~this post was~~ ^{if} filled by promoting the Group Instructor as per the Recruitment Rules instead of Respondent No. 3, then a vacancy of Group Instructor would have ~~arisen~~ ^{have} against which the applicant would ~~been~~ been eligible to be considered for promotion keeping in view his seniority. We have carefully considered the rival contentions and hold the view that the contention of the respondents that the present OA. is a public interest litigation is not tenable. We find substance in the argument of the counsel for the respondents. The applicant is working as a ~~Craft~~ Instructor and is eligible to be considered for promotion for the post of ~~Group~~ Instructor. As per the Recruitment Rules, the post of Principal

is to be filled only by promotion from the category of Group Instructor. The decision to regularised the services of Respondent No. 3 as a Principal has been taken as per the impugned order dated 6.3.1993 and there is no averment made by the respondents in the written statement that there was no Chief Instructor in the feeder cadre available at that time, being eligible to be considered for promotion as Principal. In the absence of any such submission, it could be taken that the post could be filled up in 1993 on promotion basis as per the recruitment rules. In such an event a post of Chief Instructor would have fallen vacant. From the seniority list brought on record by the Private Respondent No. 3 at Exhibit-1 of the Craft Instructors, we find that the applicant is at Sr.No.4 and ^{and} ~~thus~~ ^{thus the applicant} would have been in the zone of consideration as the post of Chief Instructor is a selection post as per the recruitment rules. In view of these observations, the applicant gets a cause of action on account of absorption of Respondent No. 3 as a Principal. In this view of matter, we do not find any substance or force in the submission of the respondents that the applicant is in noway aggrieved by the absorption of Respondent No. 3 as Principal and the present OA. is only a public interest litigation.

8. Now coming to the merits of the reliefs claimed by the applicant, we note ~~that~~ the two impugned orders both dated 16.9.1993, one appointing Respondent No. 3 first on deputation

basis as Principal w.e.f. 12.12.1988 and the other order thereafter absorbing the Respondent No. 3 as Principal from 4.9.1992. The applicant has challenged these orders stating that the absorption of Respondent No. 3 is not as per the Recruitment Rules. The applicant has also contended that as per the recruitment rules, the post of the Principal is to be filled by promotion only and there is no provision for filling up the post on deputation/ absorption basis. The respondents, on the other hand, have justified their action stating that since no employee was available in the feeder cadre in 1988 who was eligible for promotion to the post of Principal, the Respondent No. 3 was brought on deputation initially and subsequently he has been absorbed on a regular basis. Keeping these rival contentions in view, we have gone through the Recruitment Rules brought on record by the official respondents as well as by the applicant. From the recruitment rules, it is noted that the post of Principal is to be filled only by promotion and Group Instructors/Surveyors with 3 years regular service in the respective grade and possessing Diploma in Mechanical/Electrical/Electronics Engineering are eligible to be considered. Thus, there is no provision for filling up the vacancy either on deputation or on absorption basis. The respondents were therefore directed to produce the necessary record to disclose the basis on which the decision had been taken to issue the two impugned orders dated 16.9.1993. The respondents have made available papers from the relevant file.

On persual of the same, ^{we} note that after the absorption of Respondent No. 3 as Group Instructor had been quashed as per order dated 14.6.1993 in OA.NO.218/91, the proposal had been processed to absorb the Respondent No. 3 on the post of Principal. Therelevant notings on the file reveal that the proposal had been processed with a view to continue the applicant in the Union Territory of Daman & Diu. It is recorded in the noting that though the case of the Respondent No. 3 who belonged to State of Goa had been earlier approved for posting as Principal by the Administration in 1988 on deputation basis but the final order was issued for posting on deputation basis only on the post of Group Instructor. Since the absorption of Respondent No. 3 as Group Instructor had been quashed by the Tribunal, the noting brings out that his earlier promotion as Chief Instructor could be revived ^{and} that the Respondent No. 3 can be treated on the post of Principal on deputation basis from the same date he was appointed as Group Instructor on deputation. Subsequently, the applicant had been promoted on adhoc basis as Principle from 4.9.1992, and this date has been taken as the date of absorption on regular basis against the post of Principal. The notings do not brings out as to how the Respondent No. 3 could be treated on deputation on the post of Principal from 21.4.1988 retrospectively when he was sent on deputation for the same period on the post of ~~Chief~~ ^{Group} Instructor. Further, it is stated that Resoindebt No.3 was promoted on ad hoc basis as Principal on 4.9.1992 and from that date he has been absorbed on the post. This is contradictory because if the Respondent No.3

had been brought on deputation against the post of Principal in 1988 then it would imply that he had been promoted ^{then} as a Principal. In that case the question of adhoc promotion from 4.9.1992 would not have arisen. Further, we do not find any mention with regard to provisions of recruitment rules. It is not stated that Respondent No.3 is posted as Principal on deputation in relaxation of recruitment rules in view of the fact that nobody was available for promotion as Principal from the post of Group Instructor in the cadre of U.T. of Daman & Diu as per the recruitment rules. The respondents have stated that in 1988 nobody was available for consideration for promotion to the post of Principal and therefore the arrangement on deputation of Respondent No. 3 had to be resorted to. Even if this contention is accepted, then the situation as prevailing in 1993 when this decision was taken to absorb the Respondent No. 3 as Principal should have been taken into account with regard to availability of eligible candidate in the feeder cadre. From the Recruitment Rules brought on record, we find that there are 12 posts of Group Instructors and respondents have not stated in the written statement that any of them was not available for promotion in 1993. The above referred notings are also ^{silence} relevant on this aspect. Further if nobody was available as eligible to be considered on promotion basis in 1993, the Respondent No. 3 could have been ^{continued} treated on deputation basis till such time candidate from the feeder cadre is available for the post of Principal ~~as~~ in view of the fact that the filling up of post on absorption was

(v)

not permissible as per Recruitment Rules. The whole exercise appears to have been done by treating the applicant on deputation from 21.4.1988 on the post of Principal and then regularly absorbing on the post in 1992 as per the impugned order perhaps to circumvent the fall out of the order dated 14.6.1993 of the Tribunal. In the light of these facts, we have no hesitation to conclude that the action of the respondents to absorb the Respondent No. 3 on the post of Principal is not as per the ^{and thus} Recruitment Rules, is legally not sustainable. The impugned orders therefore deserves to be set aside.

10. In the result of the above, we find merit in the OA, and the same is allowed setting aside the impugned orders dated 16.9.1993 through which Respondent No. 3 has been absorbed on the post of Principal, Industrial Training Institute, Daman from 4.9.1992. It is, however, provided that Respondent No. 3 may be continued on the post if so desired till such time the post is filled up by promotion as per the Recruitment Rules. The action to fill up the post on promotion basis shall be taken within a period of four months from the date of receipt of the order. No order as to costs.

S.L.Jain
(S.L.JAIN)

MEMBER (J)

D.S.Baweja
(D.S.BAWEJA)

MEMBER (A)