

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 207/93

Date of Decision: 24-2-99

Shri G.R.Rathod

Shri N.I. Mirza,

Applicant.

Shri R.S. Mahite

Advocate for
Applicant.

Versus

The Administrator of Dadra and
Nagar Haveli. and others.

Respondent(s)

Shri V.S.Masurkar for respondent No.1,3,to 5

Shri K.R. Yelwe for respondent No.2

Advocate for
Respondent(s)

CORAM:

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

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

- (1) To be referred to the Reporter or not? *W*
- (2) Whether it needs to be circulated to *W*
other Benches of the Tribunal?

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 207/93

PRONOUNCED the 24th day of February 1999.

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

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

G.R. Rathod
Radio Operator
(Police Wireless)
Police Head Quarters
Silvassa, Dadra and
Nagar Haveli.

N.I. Mirza,
Radio Operator
(Police Wireless)
Police Head Quarters
Silvassa, Dadra
and Nagar Haveli.

... Applicants

By Advocate Shri R.S.Mohite.

V/s.

The Administrator of Dadra
and Nagar Haveli
Silvassa, Dadra and
Nagar Haveli.

Mr. M.R. Achari
Police Sub-Inspector
(Wireless)(Operator)
C/o Chief of Police
Dadra and Nagar Haveli
Silvassa.

The Collector,
Dadra and Nagar
Haveli, Silvassa.

The Chief of Police,
Dadra and Nagar Haveli,
Silvassa.

The Union of India through
the Secretary,
Ministry of Home,
New Delhi.

... Respondents.

By Advocate Shri V.S.Masurkar for respondent No.1,3 to 5
Shri K.R. Yelwe for respondent No.2.

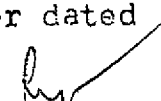
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O R D E R

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

The applicants are working as Radio Operators (Police Wireless) under the administration of Dadra and Nagar Haveli. The applicants are in the feeder cadre for the promotional post of "Police Sub-Inspector (Operational)". The second respondent was Assistant Sub-Inspector (Wireless Operator) in the office of Inspector General of Police, Goa, ^{and} came on deputation basis to the post of Police Sub-Inspector (Wireless) (Operation) at Dadra and Nagar Haveli in 1985. His deputation is being extended from time to time. Now by the impugned order dated 2.2.1993 the second respondent has been appointed as Police Sub-Inspector (Wireless Operational) under the Administration of Dadra and Nagar Haveli. The second respondent could not have been absorbed in the said post as the recruitment rules do not provide for such absorption. It is further stated that as per the recruitment rules one must have 5 years experience of Police wireless system on the level of Assistant Sub-Inspector with grade I standard. But it is stated that respondent No.2 possess only grade III standard. Hence it is alleged that he is neither eligible nor qualified for being appointed to the said post. Since the applicants are in the feeder cadre, they are aggrieved by the order of the administration in filling up the post by absorption. Respondent No.2 is neither eligible nor qualified for the said post. Therefore, the applicants have approached this Tribunal for quashing the appointment of respondent No.2 to the post of Police Sub-Inspector (Wireless Operational) under the impugned order dated 2.2.1993 and for costs.



2. The official respondents who are respondent No.1 and 3 to 5 have filed written reply stating that the applicants are not qualified for being promoted to the post of Police Sub-Inspector (Operational). There are no other persons who are qualified for being promoted to the said post. Since respondent No.2 was working on deputation in that post and since he was found qualified and eligible for promotion under the rules, he has been absorbed for the post by the impugned order. Since the applicants' promotion as Radio Operators was on adhoc basis and since they do not possess the required qualification, they cannot be considered for promotion to the post in question. That respondent No.2 has been absorbed in the post as per recruitment rules. That the order dated 2.2.1993 is perfectly valid and justified. Hence it is prayed that the application be dismissed with costs.

3. The second respondent has filed a short reply stating that the application is not maintainable since the applicants have not exhausted the remedies before approaching this Tribunal. It is further stated that since the applicants are not qualified for being promoted to the post in question they cannot have any grievance to challenge the appointment of respondent No.2.

4. The learned counsel for the applicants has questioned the legality and validity of impugned order dated 2.2.1993 under which the second respondent came to be appointed to the post of Police Sub-Inspector (Wireless Operational). It was argued that the appointment is contrary to the recruitment rules and

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further argued that respondent^{~m.2} does not have the required qualification. While justifying the appointment of respondent No.2 under recruitment rules, the learned counsel appearing for the respondents further contended that the applicants have no right to file this application since they are themselves not qualified for being promoted to the post.

5. In the light of the pleadings and the arguments addressed before us, the points that fall for determination in this application are:

1. Whether the appointment of respondent No.2 as Police Sub-Inspector(Wireless Operational) is contrary to the recruitment rules and liable to be quashed?
2. Whether the applicants have a right to file this application for challenging the appointment of respondent No.2 ?
3. What order?

6. Point No.1

Inspite of the definite allegation in application that the appointment of second respondent is contrary to the recruitment rules and specific allegation that ^{he}~~he~~ does not have the required qualification of grade I standard, there is no reply to these allegations in the written statement filed by the administration or by the second respondent.

The second respondent's short reply does not comment on any of the allegations in the application except stating that the present application is not maintainable at the instance of the applicants who are not qualified for the purpose of promotion. Therefore, they cannot file the present O.A. He has never pleaded that he has the required qualification and that his absorption is permissible under the Recruitment Rules.

The copy of the recruitment rules is at page 17 to 19 of the paper book. For the post of Police Sub-Inspector (Operational), the mode of recruitment as mentioned in ^{column} column No.7 is as follows: "Promotion, failing which by transfer on deputation and failing both by direct recruitment".

Therefore, the department has to first exhaust promotion and then take up transfer on deputation and if both of them fail, they can go in for direct recruitment.

In this case admittedly, the applicants are in the feeder cadre. But however they do not have necessary qualification for promotion to the post.

The learned counsel for the official respondents has produced two official files which shows that the department had made some effort to get an official on deputation and letters were sent to different states and different Union Territories. But there was no response.

After exhausting the two modes of promotion and deputation, the only alternative is to go in for direct recruitment.

It is not any-body's case that second respondent was appointed to the post in question by the impugned order by way of direct recruitment. We have seen the two files produced by the official respondents and there is no mention or whisper about filling up the post by direct recruitment. The only material we get from the official files is that since no official was willing to come on deputation the administration thought it better to absorb respondent No.2 in the post in which he was working on deputation basis. It is simplicitor case of absorption. The second respondent was working on deputation basis in the post in question. There is no note and no where it is mentioned that this post should be filled in by direct recruitment. The impugned order, which is at page 20 of the paper book, dated 2.2.1993, shows that the second respondent is absorbed in the post in question. It does not speak about the appointment of second respondent by way of direct recruitment.

7. Normally in the case of appointment by direct recruitment, a notification or advertisement must be issued seeking for applications from open Market, then serving officials who are having required qualification can also be permitted to apply. But in this case from the two office files we find that no attempt was made to fill up the post by direct recruitment by issuing notification or advertisement. No exercise was done for filling up the post by direct recruitment as provided under the recruitment rules. The administration could have called for applications and could have permitted the second respondent to apply for the said post and then he could have been considered as candidate for

direct recruitment alongwith other open market candidates and then appointment by direct recruitment could have been done as per the rules. That is not admittedly done in this case.

8. The notes in the office file and the impugned order shows that it is a case of deputationist being absorbed in the post. There is no provision in the recruitment rules for making appointment by absorption of deputationist. We have extracted column No.7 of the Recruitment rules which does not mention that the appointment by transfer or appointment by absorption of deputationist ~~but~~ provide only three modes of promotion, Transfer on deputation and failing which Direct recruitment. Transfer on deputation is not to fill up the post permanently. But it is only an arrangement for particular time like two years or three years. In fact respondent No.2 is on transfer on deputation from 1985. He can continue on deputation basis but there is no provision for absorption of deputationist under the rules.

There is also nothing on record from the office file to show that there is any power to relax under the rules and whether administration exercised the power in relaxing the requirement of column No.7 and then on special circumstances making the appointment by absorption of deputationist. No such plea is taken in the reply either by the administration or the respondent No.2 that he was appointed by relaxing the rules. There is neither any plea nor any material in the official file to show that by exercising the power of relaxing

the requirement ^{made in Col.} ~~made in~~ column No.7 was dispensed with and special case of absorption of deputationist was made in this case. On the face of it the action of the administration in making appointment by way of absorption is contrary to the recruitment rules and hence cannot be sustainable.

9. Then we come to qualification required for the post which is provided in ^{Col.} column No.12 of the schedule of the recruitment rules.

We have already pointed out that this is not a case of promotion or transfer on deputation. But this is a case of absorption of deputationist for which there is no provision. At best it can be taken as an indirect method of direct recruitment. For direct recruitment qualification is prescribed in column 9, which shows that a candidate with degree of a recognised university and he must have 5 years experience of having operated Police wireless at the level of Assistant Sub-Inspector with grade I standard.

There is nothing on record to show that respondent No.2 holds a degree from a recognised university. As far as his 5 years experience is concerned it must be with grade I standard. Admittedly even as on today respondent No.2 does not have grade I standard. Therefore respondent No.2 could not have been appointed to the post in question when he does not have the required technical qualification of grade I standard. At the time of argument the learned counsel for the applicant for respondent No.2 has placed two certificates before us of which one shows that he had grade II standard and the other shows

that he had grade III standard, which are issued by the Army Authority. There is no certificate to show that the respondent No.2 have grade I standard. Therefore the appointment of respondent No.2 to the post in question cannot be sustained when he does not have the minimum technical qualification as provided under the rules.

At one stage the learned counsel for the official respondents submitted that the Government has power even to relax the qualification. The entire recruitment rules are not before us. If there is a provision in the recruitment rules for relaxation of qualification then it is for the Competant Authority to pass such order that due to certain expetional reasons the required qualification is relaxed and on the basis of the relaxed qualification respondent No.2 is appointed. No such plea is taken in the reply that there is such a power and it has been exercised. The two official files produced before us do not indicate about exercise of such power by the competant authority for relaxing the qualification required for the post. In the ^{state} state of pleadings and material on record we cannot say that respondent No.2 was appointed by the Government after relaxing the educational qualification.

9. From the above discussion, we find that appointment of respondent No.2 to the post in question is contrary to the recruitment rules. Therefore it cannot be sustained. There is no provision for absorption of deputationist under the recruitment rules. Admittedly respondent No.2 does not have the required educational qualification and so on these two grounds his appointment is *Rev*

liable to be quashed. At this ^{stage} we may refer to the decision of the Supreme Court reported in (1990) 3 SCC 655 (District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, and others V/s. M. Tripura Sundari Devi) which was relied by the learned counsel for the applicant. The Supreme Court has pointed out that if a person with inferior qualification is appointed, it amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. The Supreme Court observed that the candidate so appointed to the post of teacher do not have the required qualification and hence her appointment was bad in law and cannot be sustained.

In the present case also we find that the appointment of respondent No.2 is contrary to the rules both regarding mode of appointment and qualifications for the appointment and hence appointment of respondent No.2 is not sustainable and is liable to be quashed. Point No.1 answered accordingly.

10. Point No.2

It is true that this Tribunal has no jurisdiction to entertain public interest litigation. Only aggrieved persons regarding service dispute can approach this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

It cannot be said that the applicants are in no way aggrieved by the appointment of respondent No.2. The applicants are in the feeder cadre

for promotion to the post in question. Therefore, they are very much aggrieved persons who can seek promotion. It may be that the applicants do not possess the required grade to get promotion immediately. As and when they get the necessary grade by training they can ask for promotion, in that way they are very much interested in the post in question and therefore they are aggrieved persons who have a right to challenge ^{an} illegal appointment to a post for which they are in the feeder cadre for promotion. Hence the respondents contention that the application is not maintainable has no merits. We therefore answered point No.2 in the affirmative.

11.

Point No.3

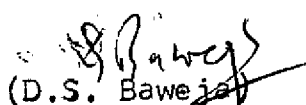
In view of our findings on point No.1 the application has to be allowed. We feel that in larger public interest we should give necessary direction so that the administration or public interest is not affected by our order. If by the result of our order the respondent No.2 is relieved and sent back to his home state then it will create a vacuum. The post is a vital post of intelligence and maintenance of law and order in the Union Territory of Dadra and Nagar Haveli. Only two applicants are in the feeder cadre for promotion but they are not yet qualified and hence they cannot be promoted. To get deputationist from other states which may take sometime, since letters will have to be sent to other states and Union Territory and their reply will have to come and then selection will have to be done. The direct recruitment is to be done after issue of notification and candidates will have to be called and their application should be processed and their interview will have to be

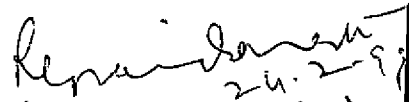
held etc. All these exercises are time consuming. Respondent No.2 ^{has} already been working in the post on deputation since 1985. We feel that in the administrative exigencies and public interest he should be allowed to continue in the said post till another candidate is selected and brought on deputation or a candidate is selected by direct recruit,

12. Since admittedly there is no candidate available for promotion and since both the applicants in the feeder cadre do not have grade I standard, we direct the administration to again call for candidates who may be willing to come on deputation basis. If somebody is selected on deputation basis then he can be posted in place of respondent No.2. If no candidate is willing to come on deputation, then the administration can go for direct recruitment. They can issue necessary notification as per the rules. In such case even respondent No.2 can also offer himself as candidate. The administration may consider the open market candidate, respondent No.2 and other candidate who may apply for the post as per the rules and then select a suitable candidate for the post in question. The administration may also consider the case of respondent No.2 by relaxing the age to apply for the said post. As far as the relaxation of educational qualification is concerned, this is a matter for the competent authority to consider whether any relaxation is necessary and if so to what extent. Point No.3 is answered accordingly.

13. In the result the application is allowed as follows:

1. The appointment of respondent No.2 in the post of Police Sub-Inspector(Wireless) (Operational) under Administration of Dadra and Nagar Haveli and the impugned order dated 2.2.1993 are hereby quashed.
2. However respondent No.2 M.R. Achari shall be continued on deputation basis in the post of Police Sub-Inspector (Wireless)(Operational) on the same terms and conditions on which he is holding till a regular candidate is selected either by transfer on deputation or by direct recruitment.
3. The administration is directed to take up steps for filling the post in question firstly by transfer on deputation (since admittedly the officials in the feeder cadre are not qualified) failing which secondly by direct recruitment subject to observations made in para 12 above.
4. In the circumstances of the case there will be no order as to costs.


(D.S. Baweja)
Member(A)


(R.G. Vaidyanatha)
Vice Chairman