

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 88/94

*Seventh January 2000* DATE OF DECISION: *07-01-2000*

Shri B.Gupta Applicant

Shri G.S.Walia Advocate for  
Applicant(s)

Versus

U.T.of Dadra and Nagar Haveli and Ors. Respondents

Shri V.S.Masurkar Advocate for  
Respondent(s)

CORAM:

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

Hon'ble Shri B.N.Bahadur, Member (A)

1. To be referred to the Reporter or not? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *No*
3. Library. *No*

*B.N.Bahadur*

(B.N.Bahadur)  
Member (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION No.88/94

Dated this Friday the Seventh day of January, 2000.

Coram : Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman  
Hon'ble Shri B.N. Bahadur, Member (A).

Bharat Gupta,  
Assistant Engineer (P.W.D.)  
Daman, Diu and Dadra Nagar Haveli,  
presently working as  
Manager (Works),  
on deputation with  
O.I.D.C., Daman.  
Applicant by Shri

.. Applicant.

V/s.

1. The Administrator,  
Union Territory  
Administration of  
Daman & Diu.
2. Mrs.Sindhu Shree Khullar, IAS,  
Development Commissioner and  
Secretary, P.W.D., U.T.  
Admn. of Daman & Diu.
3. Shri R.P. Vadhel,  
Officiating as  
Executive Engineer,  
P.W.D. Div. No.2,  
Diu - 362 520.
4. Union of India, through  
The Secretary,  
Ministry of Home Affairs  
Department of Personnel and  
Training,  
Ministry of Pension and  
Public Grievances: SCT Section,  
North Block, New Delhi - 110 001.

.. Respondents.

Respondents by Shri V.S. Masurkar, Counsel

ORDER

[ Per : Shri B.N. Bahadur, Member (A) ]

This is an application filed by Shri Bharat Gupta seeking the relief from this Tribunal, in substance, that it be held that the impugned orders dated 17.1.1994 be quashed and set aside, and



also that it be declared that the applicant is eligible to be considered for promotion as Executive Engineer, with reference to the vacancies of the years from 1987 to 1990. The applicant also seeks that the Caste Certificate dated 19.11.1983 submitted by Respondent No.3 be declared invalid.

2. The facts of the case, as put forth by the applicant, are in brief, as follows. The applicant held the post of Assistant Engineer (AE) and the normal channel for promotion for him is to the post of Executive Engineer (EE). The applicant is a Bachelor of Engineering (Civil), and belongs to general community. It is averred by applicant that Respondent No.3 (Shri R.P. Vadhel) is a promotee officer and has been further promoted to officiate as Executive Engineer vide order dated 3.5.1992. The said Shri Vadhel is junior to the applicant and belongs to Scheduled Caste Community from Gujarat State, in which State his permanent address has been declared by Respondent No.3 himself and not from Daman & Diu. Some documents have been annexed by applicant in support of his contention.

3. The applicant's grievance is, in short, that a vacancy arose for post of E.E. in 1987 and that the applicant was very much eligible; on the other hand the Respondent No.3 had not become eligible in 1987. The applicant goes on to allege that some kind of manipulation was made to deprive him of his rightful chance for promotion. His main grievance, however, is that Respondent No.3 has been promoted as a candidate entitled to (caste) reservation which, the applicant contends is not correct/legal since Respondent No.3 is a migratee in the Union

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Territory of Daman & Diu and hence not eligible to the reservation benefits outside his original state of Gujarat. The applicant has given other facts narrating the long history of his career which we are not reproducing here since the main issues involved have been brought out above.

4. The Respondents have filed a written statement in the case, where they describe the facts relating to the background of availability of posts of Engineers at various levels in the U.T. of Daman & Diu. They further state that the first vacancy of Executive Engineer, which occurred in 1987 was treated as reserved as per rules and was filled up by appointing one Shri I.M. Desai. The next vacancy arose in 1989 which has to be treated as reserved for Scheduled Castes, and since Shri P.R. Vadhel was the only person belonging to the Scheduled Caste available and eligible for promotion, he was considered and recommended for promotion. It is further asserted that the applicant Shri Bharat Gupta was also considered at this very DPC meeting which met on 4.11.1983 for filling up 1987 vacancies but was not recommended for promotion by the DPC.

5. In regard to the point relating to the Caste Certificate in respect of Respondent No.3, it is stated that the Certificate dated 19.11.1993 was issued by the Mamlatdar, Diu, who is the competent authority, and that this certificate does establish [that Vadhel was original resident of Diu and belonged to the Scheduled Caste community. It is reiterated that applicant was not considered fit by DPC for recommendation for promotion against vacancy of 1987. The details of promotions of various

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other persons like Hiremath and Rana etc. are described by Respondents. It is emphatically stated that in any case the promotion of Respondent No.3 as an S.C. candidate is neither illegal nor arbitrary/discriminatory. All other allegations made by the applicant have also been denied by Respondent in this written statement.

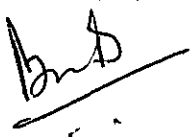
6. Applicant has also filed a rejoinder in the case dated 20.6.1995 to which a sur-rejoinder has been filed by Respondent No.3, as also additional statements by official respondents etc. We have considered all these papers. and have heard the Learned Counsel on behalf of applicant, official respondents and Learned Counsel for Respondent No.3. Detailed arguments were made by the Learned Counsels. These are reproduced, in gist, as below.

7. Learned Counsel for applicants made the following points.

(a) The promotion of Respondent No.3 made vide impugned order dated 17.1.1994 is illegal. The DPC which was held on 4.11.1993 [have taken the view that Respondent No.3 could not be held to be a Scheduled Caste Candidate.

(b). It was asserted that it was only on 18th & 19th of November respectively that Respondent No.3 applied for and procured the Caste Certificate from Mamlatdar Daman & Diu, and this[[as invalid, and could not undo the facts of the earlier Caste Certificates (the application dtd. 18.11.83 and the Certificate dated 19.11.83 are at pages at 313 and 61 respectively in paper book).

(c). Counsel for applicant referred to documents at page 24 and 34 of the paper book to show that the applicant was a native



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originally of Amreli District in Gujarat. Page 41 was referred to for official definition of Residence.

(d) The DPC record at page 326 of the paper book was strenuously cited to contend that Respondent No.3 was clearly noted by a DPC member and Senior U.T. Officer to be not qualified for reservation in the U.T. of Daman & Diu.

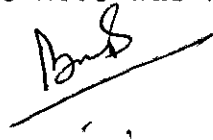
(e) Relevant Government instructions regarding date of notification, were cited to assert how Respondent No.3 was an Scheduled Caste only in Gujarat State and the point made that he had himself maintained this earlier throughout.

(f) It has been clearly asserted by the official Respondents in their affidavit at para 8 that the Respondent No.3 is not entitled to Reservation.

A judgment was referred to in support in the case cited at 1994 (2) ATJ 660.

(g) It was here that applicant is here to claim his own promotion and not per se with a prayer for cancellation of Caste Certificate.

8. Arguing the case on behalf of the official Respondents, their learned Counsel first emphasised the importance of the cut-off date of 1968, as stipulated in the instructions already referred to, and said that it was also important to go into the facts of the residence the family of the applicants. He asserted that it was clear that the original residence of Respondent No.3 was not Daman & Diu, but was in Gujarat State.

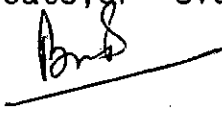


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9. Learned Counsel Shri Masurkar strenuously made the point that the State Government have gone deep into this matter and had ferreted out full information relevant to the case of Shri Vadhel. In fact, the Administrator of the Union Territory had issued a show cause notice to R-3 and was in the process of taking a decision on merits in pursuance of these proceedings. However, this action was withheld in view of the pendency of this O.A. He mentioned that what was now really being sought by Respondents was that the U.T. Administration should be allowed to pass appropriate orders on merits in the case of R-3.

10. The case was also argued on behalf of Respondent No.3 (Shri Vadhel) by his learned Counsel, Shri Gangal. Shri Gangal stated that as regards the point that R-3 was stated to be not eligible for benefits of reservation in the Union Territory, it was to be observed from the record referred to that only one member of the DPC had taken this view, and this could not be the final view. He stated that on merits the ratings of Respondent No.3 were better (Page 326). Shri Gangal referred to reply of Respondent No.3 to M.P. dated 23.9.1997. In this reply Respondent No.3 has stated that he was a Scheduled Caste both in Gujarat State and in the U.T. of Daman & Diu. It was argued that no cancellation of the certificate issued by the Competent Authority could be done by the Tribunal which had no powers in this regard.

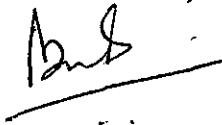
11. Another argument strenuously made by the Counsel for R-3 was that the Administrator of U.T. cannot cancel the Caste Certificate, or even issue a show cause notice, since this power



lay only with the Collector. Both certificates related to the same caste and both were valid. Learned Counsel also raised the point that applicant is forbidden to raise the issue now, since he is affected by res-judicata in view of the decision in O.A. 138/90.

12. Re-arguing the case briefly Learned Counsel for applicant stated that he was not asking for a determination from this Tribunal as to whether Respondent No.3 was an SC or not. The applicant was claiming what was due to him. Reacting to an argument made in regard to two caste certificates, Learned Counsel, Shri Walia, even stated that obtaining two certificates was an act of fraud and referred to the judgments cited at 1997(1)SCSLJ 490. He concluded by praying that in case the decision was to reconsider the matter relating to caste certificate, then all other contentions could be left open.

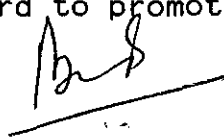
13. We have considered all these arguments and seen the papers filed in this case. It is seen from the impugned order promoting Respondent No.3 that, clearly, he (Respondent No.3) has been promoted against a reserved vacancy. In the arguments made before us, the main burden rested on the point of the eligibility of Respondent No.3 to the benefit of reservation in the Union Territory, on the basis of his being a Scheduled Caste. The contention was that no man could change his "Residence" in the context of benefits of reservation for the aforesaid purpose. Reference was also drawn, in this context, to a specified date which was very relevant. Instructions on the subject on record were referred to, during the detailed discussions made on behalf





of applicants, official respondents and Respondent No.3. In fact, the stand of the official respondents is that they should be allowed to take a decision on the subject, on merits.

14. The important issue that emerges is as to whether Respondent No.3 deserves the benefit of reservation in the Union Territory of Daman & Diu- a benefit which he has been given in the shape of a promotion. The status of his Caste Certificate will obviously be need to be determined with finality as per law and rules prevailing. It is the contention taken in the statement of the official respondents, dated 19.8.1994, that the certificate dated 19.11.1993 issued by the Mamlatdar, Diu had stated that Respondent No.3 was original resident of Diu and belonged to SC community. However, in the statement made later by the official respondents i.e. their additional written statement dated 9.7.1971, they have stated that the Caste Certificate and entitlement of Respondent No.3 for claiming benefits as SC candidate was examined by the Department, and it was found that he was not entitled for the said benefits from the U.T. Administration, since he was a Scheduled Caste from Gujarat State. Further on, in the same written statement they give detailed reasons for this conclusion, alongwith dates and Annexures. A somewhat detailed analysis of the merits of the issue and an examination of the legal position in regard thereto has been attempted in the statement of the official Respondents. We will not go into these details. Suffice to mention that further on it is prayed that the case of Respondent No.3 with regard to promotion to the post of Junior Engineer onwards may be



allowed to <sup>be</sup> re-examined by official Respondents. Learned counsel for official respondents had reiterated this request during oral arguments.

15. There is no doubt that it will be just and proper that this prayer of the official respondents be allowed. It is essential, as already explained above, that the caste status of R-3 be first established. It will have to be appropriately established by the competent authority in the U.T. Administration and not by this Tribunal.( In this context we agree with the argument of Learned Counsel for Respondent No.3).

16. A point was also raised that it was the Collector who was competent to decide on the veracity / legality of the Caste Certificate issued by Mamlatdar, and not the Administrator of the Union Territory. We need not go into this, except to state that it will obviously have to be decided by the competent authority and the U.T. Administration should determine as to which authority within the UT Administration (Collector, Administrator etc.) was the competent authority to decide the matter. We propose to mould the relief therefore, on the above lines, as we see this to be the most appropriate course in the interest of justice.

17. We must note, at this stage that some points have been pleaded on merits by the applicant apart from the above issue also. For instance, he has stated that he deserves promotion against the vacancy of the year 1987 onwards. In fact, this is prayed for in para 5 of O.A. Similarly, for example, other

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issues are raised in the amended para 5(h) and in amended prayers etc. The Respondents, as also private respondents have sought to meet some of these points but these were not gone into in detail, and as already stated the main burden of the discussions at the time of arguments related to the issues regarding caste certificate / entitlements of Respondent No.3. We are therefore not going into these merit of the case and indeed, as urged for by the applicant's counsel, we would leave them open.

18. We take notice of a recent judgment of the Hon'ble Supreme Court of India in the case of Guljar Singh vs. SDM & another (1999( 2) SCSLJ 218) to make the point that full opportunity will need to be provided as per normal principles of natural justice, to respondent No.3 before any decision is taken on his on caste certificate/s made this case.

19. In view of the above discussions we make the following orders on the application before us:-

(a) The competent authority of the UT Administration of Daman & Diu shall take up the case relating to the caste certificate of Respondant No.3, Shri B.P.Vadhel after following the prescribed procedure <sup>and *B.P.*</sup> take a decision in the matter through a speaking order. Needless to say, before taking a decision, due hearing should be provided to the affected party/parties.

(b) The other issues raised in the case are left open.

There will be no order as to costs.

*B.N. Bahadur*

(B.N. Bahadur) 07-01-2000  
Member(A)

*R.G. Vaidyanatha*  
7-1-2000  
(R.G. Vaidyanatha)  
Vice Chairman