

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1222/94

Date of Decision: 22-2-99

Smt. Abhilasha Agarwal.

.. Applicant

Mr. M.S. Ramamurthy

.. Advocate for  
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

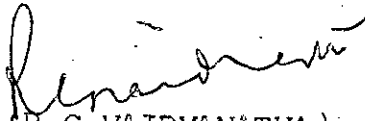
Mr. R.K. Shetty.

.. Advocate for  
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman,  
The Hon'ble Shri D.S. Baweja, 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 ? *no*

  
(R.G. VAIDYANATHA)  
VICE - CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1222/94.

PRONOUNCED, THIS THE 22<sup>nd</sup> DAY OF FEBRUARY 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri D.S.Baweja, Member(A).

Smt. Abhilasha Agarwal,  
Assistant Superintendent,  
Superintendent of Fisheries,  
Administration of Daman and Diu.  
(By Advocate Shri M.S.Ramamurthy)

... Applicant.

V/s.

1. Union of India through  
the Secretary,  
Ministry of Home Affairs,  
North Block,  
New Delhi.
2. The Administrator of Union  
Territory of Daman and Diu,  
Government House,  
Moti-Daman,  
Daman - 396220.
3. The Chairman,  
UPSC, Dholpur House,  
Shahjahan Road,  
New Delhi - 110 011.

... Respondents.

(By Advocate Shri R.K.Shetty)

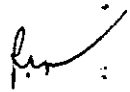
: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed their reply. We have heard the counsels appearing on both sides.

2. The applicant is working as Assistant Superintendent of Fisheries under the Administration of Daman and Diu. She is in the feeder cadre of promotion for the post of Superintendent of Fisheries. She came to be

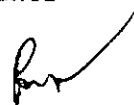
...2.



appointed as Assistant Superintendent as per order dt. 29.3.1990. She has the eligibility and the necessary experience for being considered for promotion to the post of Superintendent of Fisheries. It is also mentioned in the application that the vacancy of the post of Superintendent of Fisheries is in existence since many years and even prior to the 1993 Recruitment Rules. Her case is that the post has to be filled up as per the Rules which were prevailing when the vacancy arose. According to her when the vacancy arose in 1967 Recruitment Rules were in force and the post has to be filled as per that Rules. According to those rules promotion has to be considered first and then filling up the post by deputation has to be considered and failing which by direct recruitment should be done. But the respondents initiated steps to fill up the post as per 1993 Rules. According to her, under the 1993 rules, the respondents have clubbed promotion and deputation as a composite method for the purpose of Recruitment <sup>which</sup> is illegal. According to her, even under the 1993 Rules, the respondents should be directed to consider the case of promotion in the first instance, failing which to adopt deputation and failing which by adopting direct recruitment. It is also her case that as per this composite method the applicant was not selected, but some third person has been selected and it is liable to be quashed. On these allegations she has approached this Tribunal praying for quashing the selection of the Officer for the post of Superintendent of Fisheries as per DPC proceedings dt. 2.9.1994, the respondents be directed to fill up the post under the provisions of the 1967 Recruitment Rules and to declare that that portion of the 1993 Recruitment Rules which provides for composite method of selecting the officer by clubbing promotion and deputation be declared as arbitrary, unsustainable and be quashed and further consequential reliefs.

3. The respondents in the reply have asserted that they are well within <sup>their</sup> the rights to fill up the post under the 1993 Recruitment Rules. Then it is further stated that 1967 Recruitment Rules have been amended in 1970 in prescribing certain qualifications for the promotional post and the applicant does not possess the required qualification as per the amendment made in 1970. It is stated that under the 1993 Rules there is a composite method of considering the candidates both from promotion and deputation and this is perfectly valid in law. Then it is stated that applicant's case was considered for promotion in the composite method, but she was not selected but a better candidate has been selected by the DPC, that the Recruitment Rules are perfectly valid and are not liable to be quashed. Since the applicant has been considered and not selected she cannot have any grievance in the matter and this Tribunal cannot sit in appeal over the decision of the DPC. It is, therefore, prayed that the application be dismissed with costs.

4. The learned counsel for the applicant contended that the post of Superintendent of Fisheries fell vacant some time in 1990 and therefore it has to be filled up by the Recruitment Rules then existing when the vacancy arose viz. 1967 Rules as amended in 1970. He therefore, contended that the action of the respondents in trying to fill up that post under the 1993 Recruitment Rules is illegal and liable to be set aside. He also attacked the vires of the 1993 Rules where composite method is provided for selection of the candidate from among the candidates due for promotion and officials who are willing to come on deputation. Then, he also attacked the decision of the DPC in not selecting the applicant. He also commented about the non-availability of ACRs for particular period and about preparation of ACRs for some year belatedly etc. On the other hand, the learned counsel for the respondents



maintained that the respondents action to fill up the post under the 1993 Rules is fully justified and does not call for interference. He also supported the decision of the DPC on merits in not selecting the applicant and in selecting another candidate by way of transfer on deputation. Though both the counsels have addressed number of contentions before us, we find that the application has to succeed on a short legal ground and therefore it is not necessary to express our opinion on other contentions urged by counsels on both sides.

5. Admittedly, the vacancy arose in 1990. At that time relevant Rule in force was 1967 Recruitment Rules with amendment in 1970. The Recruitment Rules of 1993 under which the impugned selection took place came into force in 1993 three years after the vacancy arose. The question is whether the post should be filled up on the basis of Recruitment Rules which were in force when the vacancy arose or it can be filled up as per the Recruitment Rules which were in force at the time the department initiates action for promotion.

6. In our view, the question is no longer res-integra and is covered by number of decisions of the Supreme Court.

The leading case on the point is reported in 1983 SCC (L & S) 382 (Y.V.Rangaiah and Ors. V/s. J.Sreenivasa Rao and Ors.) where the Supreme Court has observed as follows :

"The vacancies which occurred prior to the amended rules would be governed by old Rules and not by the amended rules... But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules".

7. In our view, the above decision squarely applies to the present case. Since a vacancy arose in 1990 it has to be filled up as per the then Recruit-



ment Rules viz. the 1967 Rules as amended in 1970. The 1993 Rules could not have been invoked to fill up the post when the vacancy had arisen in 1990.

The above view in Y.V.Rangaiah's case was followed by the Supreme Court in the case of P.Gnaneshwar Rao and Ors. V/s. State of Andhra Pradesh and Ors. (reported in 1989 SCC (L&S) 123). In para 9 the Supreme Court has quoted its earlier decision in Y.V.Rangaiah's case and then in para 10 it has observed that the said law declared in Rangaiah's case applies to that case also. It is clearly held that the amendment made on 28.4.1980 does not apply to the vacancy which had arisen prior to the date of the amendment.

8. The same question again arose for consideration before the Supreme Court in the case of P.Mahendran and Ors. (reported in 1989 SC SLJ 167). In this case also the Supreme Court followed the earlier Judgment in Y.V.Rangaiah's case and held that the selection made under the old rules was perfectly valid and the new rules cannot be applied to the vacancies which had arisen earlier and for which the selection process had been initiated.

9. The learned counsel for the respondents invited our attention to a case reported in 1997 (2) SLJ (SC) ( The Vice Chancellor, University of Allahabad and Ors. V/s. Dr.Anand Prakash Mishra & Ors.) in support of his contention that the law prevailing at the time of the actual recruitment should be applied and not the law which was prevailing on the date of vacancy. That was a case where the law was amended in 1994. The question was whether the amended law should apply to the Recruitment or the old law. The Supreme Court referred to section 15 of the amended law where the law was made retrospective subject to certain exceptions. If the exceptions are not applicable then it is a retrospective law which applies to the vacancies which were existing prior to the amended law and vacancies arising after the amended law. On facts, it was held that the savings clause or the exceptional clause

did not apply to the facts of the case and therefore it was held that the law at the time of recruitment should be applied. Therefore, it is a case decided on the peculiar facts of that case and further the law itself was made retrospective to apply to all vacancies arising before and after the amendment subject to certain exceptions like the selection process that is being already initiated which included written test or viva voce. Therefore, in our view, this decision is not helpful to decide the point under consideration. On the other hand, the decision of the Supreme Court in Y.V.Rangaiah and subsequent decisions referred to above makes the position very clear that the rules that were prevailing at the time when the vacancy arose should be applied and not the rules in force when actual recruitment took place.

10. Since in this case the vacancy arose in 1990, the Recruitment Rules of 1967 as amended in 1970 are to be applied.

Under the 1967 Rules, the mode of recruitment for the post of Superintendent of Fisheries was by way of promotion, failing which by transfer and failing both by direct recruitment. In view of the 1967 Rules, the department has to first exhaust promotion and if no suitable candidate is available then it has to go in for transfer and if no candidate is available to come on transfer on deputation to go in for direct recruitment. But, in the 1993 Rules promotion and transfer by deputation has been made a composite method for selection. But in 1967 Rules the mode is provided one by one and not composite.

Since we have held that 1967 Rules applies to this case, the department has to exhaust one by one viz. promotion, then transfer and then direct recruitment. The present method of following composite method of clubbing and promotion and deputation under the 1993 Rules cannot be applied to the present

...7.

case since no such provision is found in 1967 Rules which should be applied for filling up this vacancy as mentioned above. Therefore, the action of the respondents to fill up the posts by composite method under the 1993 Rules is liable to be quashed.

11. Though there is a plea in the reply that applicant does not possess required qualification as per 1967 Rules as amended in 1970, we find there is no merit in this plea. We may also mention that at the time of arguments the learned counsel for the respondents did not raise this point. No doubt, in 1970 there is an amendment regarding qualification, but this qualification provided in the 1970 amendment is for a direct recruit. There is no amendment so far as the qualifications for promotion. The amendment is only in Column No.7 of the Recruitment Rules which provides for educational and other qualifications required for direct recruits. As far as promotion is concerned it is in Column No.11. As per Column No.11 for promotion the only requirement is that the candidate must be an Assistant Superintendent of Fisheries with three years service in that grade. No qualification is provided either in 1967 Rules or amended in 1970 so far as promotion is concerned. The amendment to qualification is only in Column No.7 which applies to direct recruits.

In the present case, admittedly, the applicant was appointed on 29.3.1990. She completes three years of service by 29.3.1993. The new 1993 Rules came into force on 7.10.1993. Therefore, by March, 1993 the applicant had attained the required eligibility for being considered for promotion as per the then existing rules and therefore, the respondents action in initiating recruitment process under the 1993 Rules is not sustainable in law.

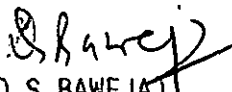





One of the contentions of the respondents counsel is that the applicant has participated in the selection process and hence cannot be allowed to question the same. Here we find that applicant had sent two to three representations when the Notification dt. 27.10.1993 was issued by the Administration for calling for applications to fill up the post of Superintendent of Fisheries and in those representations she has objected to the action of the Administration and wanted her case to be considered independently for promotion without clubbing with other candidates who come for deputation. In spite of her two to three representations the Administration has not taken any action. Therefore, it is not a case where she has simply participated in the selection process, but it is a case where she has protested to the action of the Administration. Further, we find that the Recruitment process under the 1993 Rules is invalid in view of the law declared by the Supreme Court.

12. In the result, the application is allowed as follows:

- (1) The action of the respondents to fill up the post of Superintendent of Fisheries in pursuance of Notification dt. 27.10.1993 under the 1993 Recruitment Rules is hereby quashed. Consequently, any selection made as a result of that selection process will be invalid and illegal.
- (2) The respondents are now directed to fill up the post of Superintendent of Fisheries, first by resorting to promotion from a feeder cadre of Assistant Superintendent of Fisheries as per the 1967 Rules with 1970 amendment. If no candidate is suitable for promotion, then the department can go in for deputation and failing which to go in for direct recruitment under the 1967 Rules.
- (3) The respondents to take necessary steps and initiate action in pursuance of this order and comply with the same expeditiously and preferably within a period of four months from the date of receipt of copy of this order.
- (4) No order as to costs.

  
(D.S. BAWEJA)  
MEMBER(A)

  
(R.G. VAIDYANATHA) 22/11/99  
VICE-CHAIRMAN

b.