

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 366/94

Date of Decision: 20-10-1999

J. Pandey

Applicant.

Shri I.J.Naik

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar for R-1& 2

Shri M.S.Ramamurthy for R-3.

Advocate for  
Respondent(s)

CORAM:

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

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? ✓
- (3) Library. ✓

(D.S.BAWEJA)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA.NO. 366/94

Dated this the 20<sup>th</sup> day of October 1999.

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

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

J.Pandey,  
Statistical Officer,  
Administration of  
U.T. of Daman & Diu,  
Collectorate,  
P.O.: Moti Daman-396 220.

... Applicant

By Advocate Shri I.J.Naik

V/S.

1. Union of India  
through The Secretary,  
Ministry of Home Affairs  
Central Secretariat,  
North Block, New Delhi.
2. The Administrator,  
Union Territory of  
Daman & Diu,  
Administrator's Secretariat,  
P.O. : Moti Daman-396 220.
3. Shri Faquir Chand,  
The Deputy Director,  
Dept. of Planning & Statistics,  
U.T. of Daman & Diu,  
Fort Area, Moti Daman-396 220.

... Respondents

By Advocates Shri V.S.Masurkar  
for Respondents 1 & 2 and Shri  
M.S.Ramamurthy for Respondent  
No.3.



..2/-

O R D E R

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

This application has been filed challenging the promotion and absorption of Respondent No. 3 as Deputy Director of Planning, Statistics in Union Territory of Daman & Diu as per impugned order dated 4.9.1992 with a prayer to set aside the order dated 4.9.1992 and consider the applicant for promotion against the same post from 1.9.1989 when the applicant became eligible for promotion and pay arrears of salary arising thereof with interest of 18%.

2. The applicant was appointed on 1.9.1986 as Statistical Officer (S.O.) under the Government of Goa, Daman & Diu when it was a combined Union Territory. S.O. is the feeder cadre for next promotion to the post of Deputy Director Planning & Statistics as per Recruitment Rules of 1980 which are still applicable to the Union Territory of Daman & Diu after creation of State of Goa. In case of non availability of a candidate on promotion, the post is to be filled by direct recruitment. The applicant became eligible for promotion from 1.9.1989 onwards after completion of 3 years of service. The applicant had made representation on 2.12.1991 for considering him for promotion to the post of Deputy Director, Planning & Statistics but without considering his case for promotion as per recruitment rules, Respondent No. 3, Shri Faquir Chand belonging to State of Goa as

per his option has been posted on the said post as per the impugned order dated 4.9.1992 in violation of recruitment rules. Respondent No. 3 also does not possess the required educational qualification for direct recruitment and further the vacancy was not advertised to be filled up through Union Public Service Commission (UPSC).

3. Feeling aggrieved by the posting of Respondent No. 3, the present OA. has been filed on 16.3.1994 seeking the following reliefs :-

(a) to set aside the promotion of Respondent No.3 as per the impugned order dated 4.9.1992.

(b) to consider the applicant for promotion to the post of Deputy Director, Planning and Statistics from 1.9.1989 when the applicant became eligible and the vacancy was available and pay applicant arrears of pay from 1.9.1989 with interest of 18% per annum.

4. The applicant has based his case on the following grounds :-

(a) The appointment of the Respondent No. 3 to the post Deputy Director, Planning and Statistics, Daman & Diu is in violation of the recruitment rules as absorption of a person from out side the Union



..4/-

Territory amounts to direct recruitment. Further, Respondent No. 3 does not possess the required qualification for direct recruitment.

(b) The action of the respondents in appointing Respondent No. 3 is malafide.

(c) Applicant was eligible for consideration for promotion to the post of Deputy Director after completion of the required service on 1.9.1989. However, he has been ignored causing 'patent' injustice' to him and thereby violating the provisions in Articles 14 & 16 (1) of the Constitution of India.

5. Respondents No. 1 & 2 in the written statement have submitted that one post of Deputy Director of Planning and Statistics was transferred to the U.T. of Daman & Diu as per order dated 22.6.1987. Respondent No. 3 who was on deputation to Silvassa (Dadra & Nagar Haveli) as Statistical Officer was selected for the said post as per the order dated 17.7.1987. Initially he was appointed on deputation for a period of one year which was further extended. Respondent No. 3 initially opted for the State of Goa but he subsequently revised his option for U.T. of Daman & Diu. This option was considered by the State Advisory Committee in 1989 but did not find favour with Committee. However, on subsequent clarifications, the Committee amended its



recommendations allowing the option of the Respondent No. 3 for the U.T. of Daman & Diu. The Ministry of Home Affairs has approved the recommendations of the State Advisory Committee as per the letter dated 27.11.1989. Thus, the Respondent No. 3. Sh. Faquir Chand is allocated to the U.T. of Daman & Diu with the approval of competent authority. Respondent No. 3 is senior to the applicant who had not completed 3 years of service in 1987. Further, the allegation of Respondent No. 3 not having the required qualification is misconceived as the same applies to direct recruitment and not to promotee. In view of these facts, respondents contend that promotion of the Respondent No. 3 is as per rules and there is no illegality committed in issue of the impugned order dated 4.9.1992.

6. Respondent No. 3 has filed separate written statement controverting the averments of the applicant in OA. and reiterating the submissions of the official respondents No. 1 & 2. In addition, the ground of OA. being barred by limitation has also been taken.

7. We have heard the arguments of Shri I.J.Naik, learned counsel for the applicant, Shri V.S.Masurkar, learned counsel for Respondents No. 1 & 2 and Shri M.S.Ramamurthy, learned counsel for the Respondent No. 3.



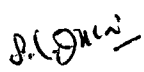
8. From the averments of the applicant in the application, it is noted that the applicant has built his entire case on the ground that as per the recruitment rules, the post of Deputy Director of Planning & Statistics is to be filled by promotion failing which by direct recruitment and therefore absorption of the Respondent No. 3 who is an outsider for the U.T. of Daman & Diu on the post as per impugned order will amount to direct recruitment and the same has not been done following the rules for direct recruitment. However, on consideration of the facts disclosed by the respondents in the written statement, we have no hesitation to conclude that the case of the applicant cannot stand. From the submissions of the official respondents, we note that though the Respondent No. 3 had initially opted for the State of Goa, but he revised his option subsequently. The State Advisory Committee considered the options of all the staff for allocation on 29.9.1989 and at the first instance did not recommend the case of Respondent No. 3 for the U.T. of Daman & Diu. However, subsequently on clarification furnished by the Government with regard to status of Respondent No. 3 and availability of vacancy of Deputy Director, the Committee revised its recommendations. The recommendations have been finally approved by the Ministry of Home Affairs as per the letter dated 7.2.1990 at Annexure- 'R-2' of the written statement. This letter concludes that the Respondent No. 3 is allocated to the U.T. of Daman & Diu and the applicant's contention that the Respondent No. 3 is an outsider is <sup>thus</sup> not teneable. Once this is

established, then the applicant has no cause of grievance on the appointment of the Respondent No. 3 on the post under challenge. The Respondent No. 3 is admittedly senior to the applicant and was due for promotion as per the recruitment rules in 1987. The applicant after completion of 3 years of service cannot claim promotion over the Respondent No. 3 who also belongs to the same cadre. In the light of these facts, no fault can be found with the impugned order and the applicant is not entitled for the reliefs prayed for.

9. The applicant has also raised the plea that the appointment of the Respondent No. 3 is malafide and without application of mind. In view of the observations made in para 8 above, this allegation is without any basis and is not tenable. The plea of violation of provisions of Articles 14 & 16 of the Constitution of India also does not hold weight.

10. Since we have not found any merits in the OA. and the same deserves to be dismissed accordingly, we are not going in to the ground of limitation raised by the Respondent No. 3.

11. In the result of the above, the OA. being without merits cannot be allowed and is accordingly dismissed. No order as to costs.

  
(S.L.JAIN)  
MEMBER (J)

  
(D.S. BAWEJA)  
MEMBER (A)