

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

79/X/10

R.P. NO. 116/94 in O.A. NO. 437/94

19031-
9032

Vasant K. Aher Rao Applicant
v/s

The Administrator of Respondents
Daman & Diu & Others

CORAM :

- 1) Hon'ble Shri B.S. Hegde, Member (J)
- 2) Hon'ble Shri M.R. Kolhatkar, Member (A)

TRIBUNAL'S ORDER

DATED: 14-10-94

(Per: Hon'ble Shri B.S. Hegde, M(J))

1. The Applicant has filed this application seeking review of oral judgement dated 26-8-1994 in O.A. 437/94 which was dismissed at admission stage.

2. We have seen the Review Application. He has filed this Review Application on 27-9-1994. It may be recalled that at the time of disposal of the O.A., the Applicant appeared in person and had not engaged any advocate; however, he engaged service of Shri Walia and he made a mention on 29-9-1994 in the open court that since the Applicant's term of appointment would come to an end by 30-9-1994, he requested that the Review Application may be heard by the Bench before his retirement. Considering the complex situation, and the request made by the learned counsel, we thought, that it would serve the ends of justice if the Review Application is listed for preliminary hearing for admission and accordingly

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the case was listed on 30-9-1994 which we consider, an exception to the normal rules and practice.

3. In our order, we noticed that the Applicant was appointed as an ad-hoc employee and put about two years of service in the post of Superintendent of Fisheries and his service is liable to be terminated in accordance with the appointment order. The Applicant had filed earlier O.A. 949/93 seeking the same prayer as is claimed in this O.A. and the Tribunal has disposed of the said O.A. with ^a direction that the Applicant may be considered whenever a regular appointment is available and he may be considered for regular appointment in accordance with the rules if he is eligible vide its order dated 29-10-1993.



The main contention of the Applicant in this application is that he should be confirmed in the post on regular basis under the existing rules when the vacancy arose and therefore, the amended rules cannot be applied retrospectively. In support of his contention, the learned counsel for the Applicant Shri Walia relied upon the Supreme Court's decision in Y.V. Rangiah and Ors. v/s. J. Sreenivasa Rao & Ors. - 1983 SCC (L&S) 382, wherein it was observed that the "vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the

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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". He further stated that the said view is reflected in P. Ganeshwar Rao and Ors. v/s State of Andhra Pradesh and Ors. - 1989 SCC (L&S) 123. Therefore, he contends, that since the vacancy arose prior to the amendment of the rules, consequently he should be regularised under the existing rules and not under the amended rules. The Recruitment rules for the post of Superintendent of Fisheries have been amended as on 6-10-1993 which came into force on 7-10-1993 which provides that the post is to be filled up by promotion/transfer on deputation failing which by direct recruitment.

5. The Review Applicant draws our attention to the observations made in the order of the Tribunal that the application of the Applicant is pending with the UPSC which does not seem to be correct in view of the reply given by the Respondents stating that the Applicant did not apply in response to the second circular dated 22-3-1994. Hence, the Tribunal's findings are not in consonance with the reply of the Respondents. In this connection, when a query was made to the learned counsel for the Applicant whether he would be able to furnish a copy of the application submitted to the Respondents, he was unable to furnish any such document. Therefore, we find that this action could not be assailed by

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filling the Review Application. We have rendered the decision after considering the ratio laid down in the recent decision of the Supreme Court in Union of India v/s Yogendra Singh (1994) 27 ATC 746 wherein it is held that "no candidate who does not possess currently prescribed qualification but who may possess the educational qualifications prescribed earlier, then he can be said to be qualifying or having any vested right to appointment even against some earlier unfilled vacancy. Every candidate who aspires to get any vacancy must possess the educational qualifications that are then prescribed.

6. It is an admitted fact, that pursuant to the advertisement given by the Respondents vide dated 20-4-1991, the Applicant has been appointed to the post of Superintendent of Fisheries purely on ad-hoc basis for a period of six months vide dated 4-9-1992 which has been extended from time and the appointment letter clearly envisages that the appointment may be terminated at any time by a month's notice even on either side. Accordingly, his appointment has been extended from time to time till 31-3-1994 or till the post is filled up on regular basis whichever is earlier.

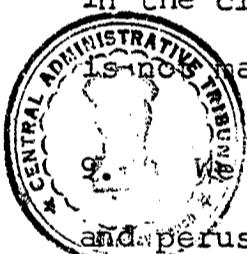
7. The Respondents in their reply to the O.A. have stated that the existing recruitment Rules as applicable on 30-5-1987 i.e. the relevant date when the erstwhile Union Territories of Goa, Daman and Diu was bifurcated into the State of Goa and the remaining part of the erstwhile Union Territory i.e. U.T. of Daman & Diu. The rules provided for filling up the post of Superintendent of Fisheries by promotion failing which by direct recruitment.

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The promotion to the post of Superintendent of Fisheries is from Asstt. Superintendent of Fisheries with 3 years service in the grade as per the schedule at page 28 of the Original Application. Later fresh recruitment rules for the Group 'B' post were published in the official gazette vide notification dated 15-10-1993 at pages 31 and 32 of the Original Application. Prior to the framing of fresh recruitment rules which provided for promotion from Asstt. Superintendent of Fisheries with 3 years' service in the grade, an advertisement was published in the Employment News on 20-4-1991 for filling up the said post as the then incumbent of the post of Assistant Superintendent of Fisheries was not yet eligible. The Applicant applied in response to the advertisement and he was offered appointment as Superintendent of Fisheries purely on an ad-hoc basis for a period of six months only and specified that the same will not confer any title to permanent employment. The last extension being upto 30-9-1994 or till the post is filled up on regular basis whichever is earlier. As stated earlier, under the new recruitment rules, the post is to be filled up by promotion/transfer on deputation basis, failing which by direct recruitment. The post was circulated first vide circular dated 27-10-1993. After receiving the applications, the same was forwarded to the UPSC who returned the proposal observing that the post ought to be circulated among the Ministries/Departments of the Central Government. Accordingly, a fresh circular was issued dated 22-3-1994. A number of applications were received and the same were forwarded to the UPSC. However, the Applicant did not submit his application in response to the second circular dated 22-3-1994, for the reasons best known to himself.

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8. When the Review petition came to be heard on 29-9-1994 we have directed the Applicant's counsel to inform the Respondents' counsel Shri J.G. Sawant and request him to be present on 30th September 94 at the time of hearing. The learned counsel for the Respondents Shri Sawant submitted that the Review Application is incomplete and the Applicant has not given Exh. 'A'. He draws our attention that the R.A. is heard by the same Bench; therefore, under the rules, it could be decided by circulation only, not by giving any hearing. If hearing is to be given, notice is to be given to the Respondents who is in Daman and for want of time, he could not contact them. Further, he submitted that the decision is given on the basis of documents, and arguments heard and the reasoned judgement is passed. In the circumstances, he was of the view that the R.A. is not maintainable.



We have heard the rival contention of the parties and perused the records. The learned counsel for the Applicant Shri Walia draws our attention to the Tribunal's decision in O.A. 138/89 - M.K.V. Gopalan v/s Collector of Customs & Ors. where the Tribunal relied upon the decision of the Supreme Court both in Y.V. Rangaiah and Ors. v/s J. Sreenivasa Rao & Ors. and P. Ganeshwar Rao and Ors. v/s State of Andhra Pradesh & Ors. wherein it was held, that the amendment made on 28-4-1980 did not apply to the vacancy which had arisen prior to the date of the amendment. With great respect, we are inclined to agree with the proposition laid down by the Supreme Court as well as the Tribunal. However, the ratio laid down

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therein, are not applicable to the facts and circumstances of this case, because the Applicant has been appointed purely on ad-hoc basis for a period of six months which has been extended from time to time although the earlier rules as well as the amended rules provide for promotion, failing which by direct recruitment which means promotion from Asstt. Superintendent of Fisheries to the post of Superintendent of Fisheries, whereas in the instant case the Applicant is seeking regularisation of the ad-hoc appointment made to the post of Superintendent of Fisheries which is not in accordance with the rules; therefore, the ratio laid down by the aforesaid decisions would not be applicable to the facts of this case, as he does not have any vested right to continue in the post. If he is allowed to continue, and to regularise, then only in that event, he can seek regularisation under the existing rules which is not the scenario in this



10.1 Regarding the interim order, the learned counsel for the Applicant relied upon the decision of the Jodhpur Bench, in Satish Kumar and Others v/s Union of India (1993) 23 ATC 562, wherein the Tribunal held, that "such power exists, but this has to be exercised sparingly when the Tribunal is satisfied that the purpose of review will be frustrated if stay is not granted." We have been told, that the post of Superintendent is not filled up so far by any one else and keeping in view the ratio in the aforesaid decision cited by the learned counsel for the Applicant, we have given directions to the Respondent to maintain

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the status-quo till the order on Review Petition is passed. He also draws our attention to Union of India v/s Mohd. Ramzan Khan's case (1990) and the ratio laid down therein, in support of his contention that, since the vacancy arose prior to the amendment of the rules, the principle laid down in Rangaiah's case should be made applicable. We find that the said contention is not tenable in the facts and circumstances of this case. He also relied upon the Full Bench decision of the Himachal Pradesh High Court in AIR 1981 H.P. 1 - The Nalagarh Dehati Co-operative Transport Society Ltd. v/s Beli Ram etc. It was held that failure of the Court to take into consideration an existing decision of the Supreme Court taking a different or contrary view on a point covered by its judgement would amount to a mistake or error apparent on the face of the record. The ratio laid down therein is not applicable to the present case because neither the Applicant nor any one else cited any decisions at the time of disposal of the O.P.A. Further, in view of what is stated at para 9 ^{supra}, it is not the case of the Applicant that after a judgement is pronounced by a Court, the Supreme Court or a larger Bench renders a decision taking a different or contrary view on a point covered by the said judgement, or where the Court so pronouncing a judgement has for whatever reason missed to take into consideration a decision of the Supreme Court. In either case, the Supreme Court decision ratio of Rangaiah's case is not applicable to the present case. The point for consideration was whether it is a mistake or error apparent on the face of the record within the meaning of Order 47 Rule 1 CPC.

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Hence, the same is not relevant.

11. We have carefully perused the Review Application and the grounds mentioned for review. Though the Applicant have purported to narrate the details of error apparent on the face of the order dated 26-8-1994, a perusal of the same would show that what is being done in the said order is to point out the conclusions reached in that order which according to the Review Applicant are wrong. These are entirely argumentative in nature and they do not point out any specific error apparent on the face of the order. In our view, the Review Applicant is aggrieved by the order passed by this Tribunal wherein we have clear reasons for our findings. No specific error has been pointed out to recall a review. The grounds furnished could be more appropriate for an appeal against that order. We notice that in the grounds mentioned in the R.A., the only contention is that he should be considered and regularised his service under the unamended Rules and not cited any decisions during the hearing of the O.A. The Review Application cannot be utilised for re-arguing the case traversing the same ground again.

12. Accordingly, we do not see any merit in the R.A. and the same is therefore dismissed. Accordingly, the interim direction given to the Respondents vide our order dated 30-9-1994 shall stand vacated.

Certified True Copy

Date 17/10/94

Section Officer

Central Govt. Tribunal

Bombay Bench.

SECTION OFFICER.

Copy to:-

Mr. V.K. Aher Rao,
C/O. Mr. G.S. Walia, Adv.

The Union of India & Ors.,
through Mr. J.G. Savant, Adv.

peru 20/10/94
Tech
20/10/94
for judgement