

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.1120/95 & 1128/95

Dated this the 1st day of October 2001.

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

Hon'ble Smt.Shanta Shastry, Member (A)

1. M.S.Rohit
At.Wagchhipa,
Po.Agriwad,
Dadra Nagar Haveli (UT),
Silvasa. (Applicant in OA.1120/95)
2. R.L.Patel
At : Kudacha Post Rakholi,
Via : Karad
Dadra & Nagar Haveli
Pin. 396 240. (Applicant in OA.1128/95)

By Advocate Shri A.L.Kasturey

vs.

1. Administrator,
Dadra Nagar Haveli,U.T.,
Silvasa.
2. Development Commissioner,
Dadra Nagar Haveli, U.T.,
(Medical & Public Health
Department),
Silvasa.
3. Chief Medical Officer,
Dadra Nagar Haveli, U.T.,
Silvasa. ... Respondents

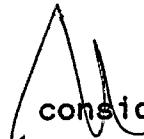
By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

O R D E R

{Per : Shri S.L.Jain, Member (J)}

These are the OAs. (OA.Nos.1120/95 & 1128/95) involving the same question of facts and law, hence, we proceed to decide these two OAs. by common order.

2. Applicant Shri M.S.Rohit in OA.NO.1120/95 and applicant R.L.Patel in OA.No.1128/95 have sought the relief to quash and set aside the order issued by the Respondent ^{bearing} No.CMO/EST/10/89/ 1123 dated 27.6.1995 and seniority list Annexure-I thereto with a direction to the respondents to prepare the correct seniority list of Sanitary Inspectors at Dadra Nagar Haveli U.T. under the Medical and Public Health Department, Silvassa as per the rules and provisions for SC/ST candidates under the Constitution of India.

 A direction is also sought to the respondents not to consider any other candidate for promotion to the next promotional post of Treatment Organiser on the basis of seniority cum suitability or selection till the said impugned seniority list dated 27.6.1995 is rectified and recasted under the rules.

3. M.S.Rohit, the applicant in OA.1120/95 being SC candidate and the applicant R.L.Patel in OA.1128/95 were appointed as Multi-purpose Health Worker on 15.9.1979 and 17.10.1980 respectively. As per the provisions in the Recruitment Rules, 1966 for Class III and Class IV services of the Administration of Union Territory of Dadra and Nagar Haveli, there were three non-ministerial & non-selection posts of Sanitary Inspectors which were to be filled in by 100% direct recruitment from amongst the candidates holding the educational qualification "S.S.C. with Sanitary Inspector's Training". As per the Gradation List of Technical and Safaiwala as on 1.7.1979 published by the Chief Medical Officer, DNH vide Memo No.CMO/EST/244-78 dated 6.2.1980 also, there were 3 posts of Sanitary Inspectors. The Administration of Union Territory of DNH amended the Recruitment Rules for the post of Sanitary Inspector vide Notification No. Adm/Est/A/RCT/25/80 dated 9.6.1981 whereby post of Sanitary Inspector became selection post and the method of recruitment was 50% by promotion from feeder cadre of multi-purpose Workers including Vaccinator, BCG Technician and F.P.Field workers and 50% by direct recruitment and the eligibility criteria for all was "S.S.C. with Sanitary Inspectors Training certificate". On promotion of Shri J.M.Chawla and due to leaving the job of ^{as} Prasad Rao, two vacancies of Sanitary Inspectors fell vacant. The respondents proposed four candidates for promotion to the post of Sanitary Inspector from the feeder cadre of Multipurpose Health Worker. Out of these 4 posts, one was already filled in by promotion.

Shri D.S.Patel (who is not a party to the OA.) having Sanitary Inspector's certificate but not from the recognised institute was not considered for promotion by the DPC constituted on 23.6.1990. Vide order No.1-9(A)(36)/90-ADM dated 26.6.1990, Shri K.M.Joshi (not party to the OA.) and M.S.Rohit, the applicants in OA.NO.1120/95, were promoted to the post of Sanitary Inspector on the recommendations of DPC vide Exhibit-'A-2'. The applicant, M.S.Rohit was promoted to the said post as the said post belonged to SC category and after promotion of Shri Chavda on 6.11.1986 to the post of Treatment Organiser, the post was reserved for SC category.

4. Shri D.S.Patel on being aggrieved by the said order dated 26.6.1990 preferred the representation before the Chief Secretary, Union Territory Administration, Dadra & Nagar Haveli on the ground that Shri K.M.Joshi who was promoted to the post of Sanitary Inspector also does not hold the Sanitary Inspectors Training certificate from Government recognised institution which is the pre-requisite for promotion to the post of Sanitary Inspector as per the Recruitment Rules. As such, Shri K.M.Joshi was reverted to his original post vide order No. 1-9(A)/50 ADM dated 14/17.6.1991. The said order was challenged by Shri K.M.Joshi before Mumbai Bench of CAT in OA.NO.391/91 which was decided on 5.2.1992 as under :

" that the reversion order dated 14/17.6.1991 is quashed and the applicant shall be restored back to his original position which was held by him. In case the applicant is not holding recognised diploma, it is for the administration to proceed against the applicant in accordance with law in the matter after giving him an opportunity of hearing."

5. The matter was examined by the administration of Dadra and Nagar Haveli and found that ^{it wants} _{in terms of} the instructions regarding certificates for Diploma in Sanitation in both the cases, i.e. in case of D.S.Patel and K.M.Joshi, the certificates do not have recognition by the administration of Dadra Nagar Haveli. The respondents relaxed the qualification for the post of Sanitary Inspector with regard to Shri D.S.Patel & K.M.Joshi vide order dated 13.10.1993 (Exhibit-'A-3'):

6. On 14.8.1991 vide Notification No.41-8/91-Admn., the respondents had amended the Recruitment Rules of 1966 for the post of Sanitary Inspector whereby the method of recruitment to the post of Sanitary Inspector is completely changed from 50% by promotion and 50% by direct recruitment to 100% by promotion from among the multipurpose workers having the educational qualification S.S.C. but with no Sanitary Inspectors Training certificate (Exhibit-'A-6').

7. On 15.12.1992 Shri R.L.Patel (Applicant in OA.NO.1128/95) was promoted to the post of Sanitary Inspector against the vacancy of 1987 which was reserved for S.T. candidate and Shri D.S.Patel was promoted as Sanitary Inspector against the vacancy of 1992 on recommendation of the D.P.C.

8. The Development Commissioner vide O.M.No.ADM/CMD/Est/10/89/1373 dated 17/26.8.1994 issued a provisional seniority list of Sanitary Inspectors. The applicant represented against the same on 20.9.1994 which was rejected on 27.6.1995 by notifying the final seniority list of Sanitary Inspectors.

9. The grievance of the applicants (Applicant in OA.NO.1120/95 & Applicant in OA.NO.1128/95) is that they were promoted to the post of Sanitary Inspector by validly constituted DPC on 26.6.1990 and 15.12.992 respectively. The impugned seniority list is in violation of Rule 7(b) of the Recruitment Rules, 1966 which states that "persons appointed on promotion will have their seniority according to the date of select list". Shri D.S.Patel and Shri K.M.Joshi who were not possessed with the recognised certificate of Sanitary Inspectors Training had been illegally promoted to the said post vide order dated 13.10.1993, There was no power to relax the Rule in respect of eligibility critaria which had been exercised by the respondents illegally without notice to the applicants. Hence, these OAs. for the above said reliefs*

10. The claim is resisted by the respondents on merits as well as on the ground of non-joinder of necessary parties, i.e. D.S.Patel and K.M.Joshi.

11. OAII was filed on 13.9.1995 and the applicant moved M.P.No.990/2000 and M.P.No.991/2000 in OA.No.1120/95 and 1128/95 respectively which were rejected vide order dated 23.1.2001 for impleading Shri D.S.Patel and Shri K.M.Joshi.

12. Notification No. 3(4)/65-GP, dated 27.2.1965 issued by Govt. of India, Ministry of Home Affairs by which the Recruitment Rules for Class III and Class IV services of the Administration of Union Territory of Dadra and Nagar Haveli, 1966 were notified ^{which} came into force on 1.12.1966 nowhere states the power of relaxation with the Government in respect of eligibility criteria. The said notification was amended on 14.8.1991 by which power to relax was added which is as under :-

"VIII. Power to relax : Where the Administrator is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provision of these rules with respect to any class of category of persons."

Thus the power to relax, if any, came into existence on 14.8.1991. On perusal of order dated 13.10.1993, Order No.CMO/EST/56/CS/1864 issued by Administration of Dadra and Nagar Haveli (Medical and Public Health department), we find that the respondents have acted in exercise of the said power to relax w.e.f. 26.6.1990. We are surprised to note that the power to relax came into existence on 14.8.1991 while it was exercised w.e.f. 26.6.1990 when there existed no such power. Thus, the respondents have given the retrospective operation to the Notification dated 14.8.1991 which is not having the retrospective effect at all.

13. Shri K.M.Joshi filed OA.NO.351/91 before this Bench which was decided on 5.2.1992 quashing the reversion order dated 14/17.6.1991 and the applicant was restored back to the original post which was held by him. It is further ordered that in case the applicant is not holding recognised Diploma, it is for the administration to proceed in the matter after giving him an opportunity of hearing. Thus, the rights of Shri K.M.Joshi were crystallised in the said OA.NO.351/91 and the respondents' power was subject to the limitation that if the applicant Shri K.M.Joshi ~~did~~ not possessed with the certificate of Sanitary Inspectors Training by recognised institution, the Administration after affording an opportunity of hearing the applicant was not entitled to uphold his promotion. Admittedly, Shri K.M.Joshi was not possessed ^{with} the said certificate in respect of Sanitary Inspectors Training by the institute recognised by the Administration of Dadra Nagar Haveli which is apparent by the order dated 13.10.1996 Ex.'A-3' para 6.

14. In view of the two limitations, one - power to relax with retrospective operation which was not available to the respondents, secondly, the case of the applicant Shri K.M.Joshi, OA.NO.351/91 was crystallised and the respondents were having only a limited scope for proceeding further in his respect, the order dated 13.10.1993 deserves to be reconsidered by the respondents.

15. We refrain ourselves from passing any order or deciding the said matter in absence of K.M.Joshi and D.S.Patel who were provided relaxation with retrospective operation but at the same time, we are of the considered opinion that the said order prima facie appears to be a case to which the respondents are bound to reconsider.

16. The Tribunal has its own limitations for the reason that the OA.No.351/91 was decided on 5.2.1992, order is passed on 13.10.1993 and the matter is coming to the light now. Therefore, we refrain ourselves from taking any action at this end.

17. It is true that K.M.Joshi and D.S.Patel are not made parties but the applicant has challenged the seniority which according to the applicant is in violation of Rule 7 (b) of Notification dated 28.1.1967 amended vide Notification dated 14.8.1991 which is as under :-

"Persons appointed to the various cadre at its initial constitution will be senior to persons appointed to that grade subsequently. Persons appointed on promotion will have their seniority according to the date of select list. Persons in the same select list will have seniority according to the order in which their names appear therein."

Perusal of the same makes it clear that persons appointed on promotion will have their seniority according to the date of select list. Persons in the same select list will have seniority according to the order in which their names appear therein. The

applicants Shri M.S.Rohit and Shri R.L.Patel, Applicant in OA.NO.1120/95 and 1128/95 were selected on 26.6.1990 and 15.10.1992 respectively while the benefit of relaxation was provided to K.M.Joshi and D.S.Patel by the Administration on 14.10.1993. They are not selected candidates. In such circumstances, the impugned seniority list dated 27.6.1995 is not prepared in accordance with Rule 7 (b) of Notification dated 26.6.1967 as amended on 14.8.1991.

18. As only the principle applied for was challenged by the applicant and no relief is sought for placing on a particular place/position, i.e. either above one or below anyone, ~~it is~~ not D.S.Patel as party respondent.

19. The action of the respondents as detailed above makes us to consider the case regarding awarding the costs to the applicants as they succeed in the OA. It is apparently the wrong selection of the respondents which dragged the applicants to the Tribunal. In such circumstances, we are of the considered opinion that the applicants are entitled to the cost. The respondents are liable to pay cost of Rs.1,000/- payable to each applicant.

20. In the result, OAs. are allowed. The seniority list (Annexure-I) dated 27.6.1995 issued vide order No. CMO/EST/10/89/1123 is hereby quashed and set aside. The respondents are directed to prepare fresh seniority list of Sanitary Inspectors at Dadra Nagar Haveli U.T. under Medical and Public Health Department, Silvassa as per the rules referred above and pay costs of Rs.1,000/- to the applicant in each case.

(SMT.SHANTA SHAstry)

MEMBER (A)

(S.L.JAIN)

MEMBER (J)

mrj.