

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 61/95
Transfer Application No.

Date of Decision : 7.4.1995

Shri V.Singh

Petitioner

Shri S.R.Atre

Advocate for the
Petitioners

Versus

~~The Administrator of Union Territory~~
~~of Daman, Diu and Dadra & Nagar~~
~~Haveli & Ors.~~ Respondents

Shri R.K.Shetty for R-1, Shri G.S.

Advocate for the
respondents

Walia for R-2, Shri M.S.Ramamurthy
for R-3.

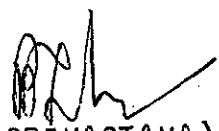
C O R A M :


The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, 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


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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DA.NO. 61/95

Shri Vishwambhar Singh

... Applicant

V/S.

The Administrator of Union Territory
of Daman, Diu and Dadara & Nagar
Havali and Others.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri S.R.Atre
Advocate
for the Applicant

Shri R.K.Shetty
Advocate for Respondent No.1.

Shri G.S.Walia
Advocate for Respondent No.2.

Shri M.S.Ramamurthy
Advocate for Respondent No.3.

ORAL JUDGEMENT

Dated: 7.4.1995

(PER: M.S.Deshpande, Vice Chairman)

By this application the applicant challenges the order dated 13.1.1995 reverting him from the post of Assistant Engineer to the post of Junior Engineer.

2. The seniority list of the Junior Engineers which is filed at page 22 of the OA. shows that Respondents No. 2 and 3 Antonio Fernandes and N.M.Makwana were senior to the applicant who stood at Sl.No.3 while N.N.Tandel, Respondent No. 4 was below the applicant. A selection was held for the post of Assistant Engineer in 1987 and the Respondent No. 2 challenged that selection by filing OA.NO. 298/87. The present applicant was Respondent in that case. By the judgement delivered on 23.6.1994 the Tribunal observed that wrong criteria of seniority-cum-fitness was adopted. The only criterion should have been

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seniority-cum-fitness. While referring to DPC 1987 the Tribunal gave a direction to Respondent No. 1 to promote the applicant, Antonio Fernandes on adhoc basis w.e.f. 30.12.1987 together with consequential benefits to which he was entitled. All the 3 respondents and applicant were parties there. The applicant's contention now is that he was selected not in the selection process of 1987 but in 1990 and his position could not be affected in the guise of the earlier selection in the earlier petition. The order in favour of N.M.Makwana and N.N.Tandel promoting them on adhoc basis was passed on 30.12.1987, The applicant had not questioned that order that Tandel was junior to him in the list of Junior Engineers which was the basic cadre from which the promotion was to be made. The applicant's promotion came to be made on 8.5.1990 (Annexure-'A-3') on purely adhoc basis and was not to bestow any claim for seniority or regular appointment. It is apparent that the same criteria which ~~was~~^{were} adopted in the 1987 selection ~~was~~^{were} followed in the 1990 selection. The position, however, remains that in view of the orders secured by Antonio Fernandes in the earlier OA ^{and}, the applicant was a party to that petition, ^{he} cannot now question the appointment of Fernandes, ^{he} Such a relief would be barred by time on the date of filing the present application.

3. Shri Atre for the applicant made it clear that he was not challenging the selection made in 1987 and urges that he could not have been reverted without reverting those who were selected in 1987 on the basis of seniority, since he was selected in the selection process of 1990. It appears that the entire selection process was vitiated and all the appointments which were made were made only on adhoc basis.

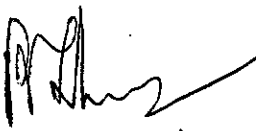
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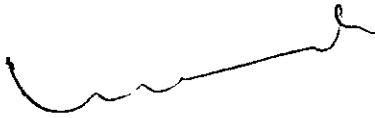
It is distressing to note that the authorities did not realise the defective procedures which were adopted and we therefore asked the learned counsel for the Respondent No. 1 whether a fresh selection is being initiated and Shri R.K.Shetty for the first Respondent stated that it has been initiated and it will take four months' time to complete the entire selection process and for making regular appointments.

4. The interim relief which was granted on 23.1.1995 was vacated on 6.2.1995. Since the applicant was appointed only on adhoc basis and this was made known to him and the selection process was itself vitiated, the applicant has no right to appointment merely on the basis of selection to Junior Engineer. We see no merit in the present application and in view of the statement made by the learned counsel for the first Respondent that the selection process will be completed within four months, we do not see any justification for admitting this petition. We find that no notice was necessary in view of the purely adhoc appointment of the applicant before his reversion if it was to make way for the earlier application and the present applicant was the junior-most person to the Assistant Engineer.

5. In view of what we have said above, we ^{are} inclined to accept the statement on behalf of the respondents that the order of reversion had been passed before the order granting Status quo and are not inclined to entertain the Contempt Petition. The C.P. is also dismissed as well as the OA.

6. The Respondent No. 1 to complete regular selection process within four months.


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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R.P.No. 60/95

in

OA.NO. 61/95

Shri Vishwambhar Singh

... Applicant

V/S.

The Administrator of U.T. of
Daman and Diu & 3 Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande

Hon'ble Member (A) Shri P.P.Srivastava

Tribunal's Order by Circulation

Dated: 25.7.95

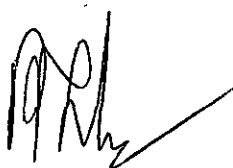
(PER: P.P.Srivastava, Member (A))

This Review Application brings out that an error has ~~been~~ crept in inadvertently on page No. 1, para 2 of the judgement. The sentence which needs correction, according to the review petition, has been quoted in Para 4 of the Review Petition and reads as under :-

"By the judgement delivered on 23.6.1994 the Tribunal observed that wrong criteria of seniority-cum-fitness was adopted. The only criterion should have been seniority-cum-fitness."

According to the applicant, the wording should be 'Seniority-cum-merit' and not 'Seniority-cum-fitness' in the above sentence. We have considered the above pleadings of the review petitioner and in our view the sentence was meant to read as under :-

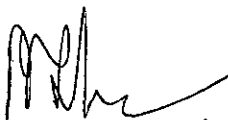
"By the judgement delivered on 23.6.1994 the Tribunal observed that wrong criteria of seniority-cum-merit was adopted. The only criterion should have been seniority-cum-fitness."




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By this change, however, nothing substantial gets modified. This is only a correction of a typographical error. While permitting it, we are of the view that nothing substantial has been brought out in the review petition which will warrant any review. The review petition is, therefore, without any merit and the same is dismissed in-lemine.


(P.P. SRIVASTAVA)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN

mrj.