

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 62/95

Date of Decision: 30.6.1998

V.K.Aherao

Applicant.

Applicant in person

Advocate for  
Applicant.

Versus

Administrator, U.T. of Daman & Diu  
& Ors. Respondent(s)

Shri R.K.Shetty

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

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

- (1) To be referred to the Reporter or not? *~~*
- (2) Whether it needs to be circulated to *~~* other Benches of the Tribunal?

*D.S.Bawej*  
(D.S.BAWEJ)  
MEMBER (A)

*R.G.Vaidyanatha*  
(R.G.VAIDYANATHA)  
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

DA. NO. 62/95

Tuesday this the 30th day of June, 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri D.S.Bawej, Member (A)

Vasant K. Aherkar,  
Supdt. of Fisheries,  
U.T. Administration of  
Daman & Diu, Daman-396 220.

Applicant in person

... Applicant

V/S.

1. Administrator, U.T. of Daman & Diu  
Administrator's Secretariat,  
Moti Daman - 396 220.
2. Union of India through Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi.
3. Development Commissioner &  
Secretary Fisheries, U.T. of  
Daman & Diu, Secretariat,  
Daman - 396 220.
4. The Secretary, U.P.S.C.,  
New Delhi, Dholpur House,  
Shahjan Road, New Delhi.

By Advocate Shri R.K.Shetty  
C.G.S.C.

... Respondents

ORDER

(Per: Shri Justice R.G.Vaidyanatha, VC)

This is an application filed under Section 19 of the Administrative Tribunal Act. Respondents have filed reply opposing admission. We have heard the applicant who appeared in person and the learned counsel for the respondents.

(X)

2. Few facts which are necessary for the disposal of this application are as follows :-  
The applicant was appointed as Superintendent of Fisheries under the Administration of Daman & Diu on adhoc basis on 20.4.1991. Subsequently, the administration wanted to fill that post by regular selection. The applicant approached this Tribunal 2-3 occasions but he could not succeed. During regular selection, UPSC has selected one Mr. Mohan. Subsequently, the applicant's services came to be terminated w.e.f. 12.1.1995. Now the post is lying vacant. The applicant says that he has got the necessary qualification and he has worked for 2½ years and the services have been wrongly terminated. His further case is that he is entitled to be regularised or confirmed on the basis of his temporary adhoc appointment. Therefore, he has approached this Tribunal praying for a declaration that the order of termination is bad and contrary to law, that the respondents have not forwarded the applicant's application to UPSC which is illegal and the respondents be directed not to appoint anybody else to the said post and other consequential reliefs.

3. At the time of arguments, the applicant submitted that the order of termination is bad and the respondents did not forward his application to UPSC for consideration for direct recruitment, that applicant's services should not have been terminated before a regular candidate is appointed. On the other hand, learned counsel for the respondents states that one Mr. Mohan was appointed by the UPSC as per the rules

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and the applicant could not be considered for direct recruitment unless the recruitment by way of promotion or deputation fails. It is further argued that applicant being adhoc appointee has no legal right to be confirmed in the new post.

4. Admittedly, the applicant's appointment was adhoc appointment for a period of six months. The applicant himself has produced the offer of appointment which he had accepted and also the appointment order clearly shows that it is only for six months and the order <sup>does</sup> not clothe him with legal right. The contention of the applicant is that he has already worked in that post for three years and placed reliance on a decision on (1990) 14 ATC 116 (Ram Bilash Pandey vs. Union of India & Ors.), that was a case where a candidate had been appointed by selection committee as per the prescribed norms and rules though it was shown as adhoc appointment. The candidate was continued for number of years. In these circumstances, it was held that fresh selection could not be made and the said adhoc appointee should be appointed. In our view, this case is not applicable in the applicant's case for two reasons. The first is that the applicant's appointment was not on regular basis and as per Recruitment Rules. Further, the applicant's similar prayer was rejected by the Tribunal and, therefore, he cannot canvas the same plea again. The applicant had filed previous OA.NO. 437/94 which was dismissed by this Tribunal by order dated 26.8.1994. The applicant himself has produced a copy of the order which is at page 38 of the paper-book. He urged the same contention that his adhoc appointment should be confirmed. The

Tribunal rejected that contention saying that he cannot be confirmed as per the existing rules. The Tribunal observed that his case for appointment for direct recruitment can be considered as per rules. Therefore, the applicant's request for confirmation of adhoc appointment cannot be considered since the appointment then was not by proper committee as per rules.

5. The applicant's main contention is that when UPSC took up the selection process, the applicant's application was not forwarded by the respondents to the UPSC. As per the Recruitment Rules, as amended in 1993, the recruitment to the present post is by promotion/transfer or deputation failing which by direct recruitment. The applicant does not answer the first two conditions, viz. promotion or deputation but he comes in the latter category of direct recruitment. The question of direct recruitment comes only if promotion/deputation fails. According to the respondents, one Mr. Mohan is appointed by UPSC. Therefore, the question of applicant's appointment by direct recruitment does not arise, when there is promotion/<sup>or deputation candidate</sup> is available. Therefore, the respondents have not forwarded the application of the applicant to the UPSC. As far as termination of appointment of the applicant is concerned, it was purely on adhoc basis and since regular selection is made by UPSC, applicant's services came to be terminated. It is not a case of termination by way of punishment or casting any stigma on the applicant and therefore observing the principles of natural justice and holding an enquiry does not arise.

(10)

6. The applicant submitted that he is already over-aged and he could not get any job anywhere. We cannot do anything since the appointment of the applicant was on adhoc basis and not on regular basis. It is brought to our notice that Mr. Mohan has not joined because it appears that there is some stay order in one case filed by promotee. Therefore, likely that Mohan has not joined the post. Even if Mohan does not join, then the department will have to consider the question of appointment by promotion. If only these two modes fail, then the department will have to go for direct recruitment. At the time when direct recruitment takes place, the applicant can apply for the same and at that time the department should relax the age limit permissible as per the rules and the applicant can take his chance.

7. In the result, the OA. fails and is dismissed accordingly. In the circumstances of the case, there will be no orders as to costs.

*D.S. Baweja*  
(D.S. BAWEJA)  
MEMBER (A)

*R. G. Vaidyanatha*  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

mrj.

(J)